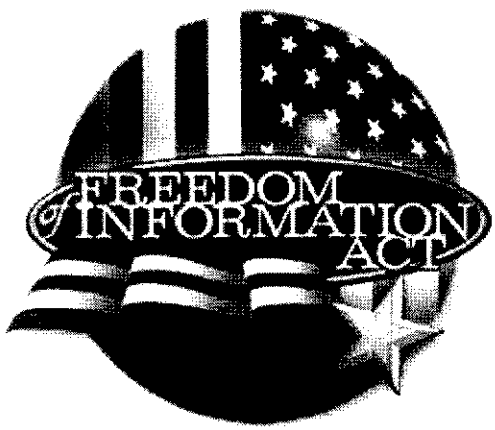
FREEDOM OF INFORMATION
AND
PRIVACY ACTS

SUBJECT: WATERGATE

EBF's and Bulkies

Bufile:139-4089

Volume 10



FEDERAL BUREAU OF INVESTIGATION

WATERGATE

BURGLARY OF THE DEMOCRATIC NATIONAL COMMITTEE HEADQUARTERS

6/17/72

BUFILE: 139-4089

EBFs and BULKIES

SERIALS:	**1110**	**2608**
	1731	**2630**
	2052	**2708**
	2146	**2725**
	2171	

PAGES REVIEWED: 356

PAGES RELEASED: 258

PAGES WITHHELD: 98

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on June 5, 1972

The United States of America	:	Criminal No.
v.	:	Grand Jury Original
George Gordon Liddy, also known as: Gordon Liddy and George F. Leonard Everette Howard Hunt, Jr., also known as: Howard Hunt, Edward L. Warren and Edward J. Hamilton James W. McCord, Jr., also known as: Edward J. Warren and Edward J. Martin Bernard L. Barker, also known as: Frank or Fran Carter Eugenio R. Martinez, also known as: Gene or Jene Valdes Frank A. Sturgis, also known as: Frank Angelo Fiorini, Edward J. Hamilton, and Joseph DiAlberto or D'Alberto Virgilio R. Gonzalez, also known as: Raul or Raoul Godoy or Goboy	:	Violation: 18 U.S. Code 371, 2511 22 D.C. Code 1801(b), 23 D.C. Code 543(a) (Conspiracy; Interception of Oral and Wire Communications; Second Degree Burglary; Unlawful Possession Intercepting Devices)

The Grand Jury charges:

FIRST COUNT:

1. At all times material hereto the Democratic National Committee, an unincorporated association, was the organization responsible for conducting the affairs of the Democratic Party of the United States.

2. At all times material hereto the Democratic National Committee had its offices and headquarters at 2600 Virginia Avenue, N.W., Washington, D.C.

3. At all times material hereto George Gordon Liddy, also known as Gordon Liddy and George F. Leonard and hereinafter referred to as defendant Liddy, was employed as counsel for the Finance Committee to Re-Elect the President, 1701 Pennsylvania Avenue, N.W., Washington

4. At all times material hereto, Everette Howard Hunt, Jr., also known as Howard Hunt, Edward L. Warren, and Edward J. Hamilton, and hereinafter referred to as the defendant Hunt, was a friend and associate of defendant Liddy and Bernard L. Barker.

5. At all times material hereto, James W. McCord, Jr., also known as Edward J. Warren and Edward J. Martin, and hereinafter referred to as defendant McCord, was the President of McCord Associates, Inc. The defendant McCord at all times material hereto also served as security coordinator for the Committee for the Re-Election of the President located at 1701 Pennsylvania Avenue, N.W., Washington, D.C.

6. At all times material hereto, Bernard L. Barker, also known as Frank and Fran Carter, and hereinafter referred to as defendant Barker, was President of Barker Associates, Inc., a real estate corporation with offices at 2301 Northwest Seventh Street, Miami, Florida.

7. At all times material hereto, Eugenio R. Martinez, also known as Gene or Jene Valdes and hereinafter referred to as defendant Martinez, was employed by Barker Associates, Inc.

8. At all times material hereto, Frank A. Sturgis, also known as Frank Angelo Fiorini, Edward J. Hamilton, and Joseph D'Alberto and DiAlberto and hereinafter referred to as defendant Sturgis, was an associate of defendant Barker.

9. At all times material hereto, Virgilio R. Gonzalez, also known as Raul and Raoul Godoy or Goboy and hereinafter referred to as defendant Gonzalez, was an associate of defendant Barker employed as a locksmith in Miami, Florida.

10. From on or about May 1, 1972, and continuing thereafter through June 17, 1972, the exact dates being unknown, within the District of Columbia and elsewhere, the defendants Liddy, Hunt, McCord, Barker, Martinez, Sturgis, and Gonzalez, hereinafter collectively referred to as the DEFENDANTS, unlawfully, willfully, and knowingly did agree, combine, and conspire with each other and among themselves to commit offenses against the United States, that is, by various illegal and unlawful methods and means, to obtain and use illegally information from the offices and headquarters of the Democratic National Committee and related political entities. The illegal and unlawful methods and means which are known to the Grand Jury that were used or attempted to be used by the defendants to obtain and use information illegally from the offices and headquarters of the Democratic National Committee were as follows:

To enter unlawfully the offices and headquarters of the Democratic National Committee:

(1) To intercept wire communications of officers and employees of the Democratic National Committee by placing in the offices and headquarters of the Democratic National Committee an electronic device or devices designed for the surreptitious interception and transmission of telephone conversations to a receiver located in a room at the Howard Johnson's Motor Lodge at 2601 Virginia Avenue, N.W., Washington, D.C. The terms "intercept", "wire communication" and "electronic device" are used by the Grand Jury as they are defined in Title 18 U.S. Code § 2510;

(2) To intercept oral communications within the offices and headquarters of the Democratic National Committee by placing within these premises an electronic device designed for the surreptitious interception and transmission of conversations of persons within these premises to a receiver located in a room at the Howard Johnson's Motor Lodge at 2601 Virginia Avenue, N.W., Washington, D.C. The terms "intercept", "oral communication" and "electronic device" are used by the Grand Jury as they are defined in Title 18, United States Code § 2510;

(3) To obtain documents, papers, and records of the Democratic National Committee by stealing them from the offices and headquarters of the Democratic National Committee;

(4) To obtain copies of documents, papers, and records of the Democratic National Committee by removing them from their location within the offices and headquarters of the Democratic National Committee, taking photographs of them and then returning them to the location from which they were illegally removed;

In furtherance of the aforesaid conspiracy and to effect the objects thereof, the DEFENDANTS did commit, among others, the following overt acts in the District of Columbia and elsewhere:

1. The DEFENDANTS did and caused to be done the acts set forth in the succeeding counts of this indictment on the dates, at the places, and in the manner set forth therein, all of which are incorporated by reference as though fully set forth and made a part hereof.

2. On or about May 5, 1972, and continuing through about May 28, 1972, Room 419 at the Howard Johnson's Motor Lodge, located at 2601 Virginia Avenue, N.W., Washington, D.C. was rented or leased by the defendant McCord in the name of McCord Associates.

3. On or about May 8, 1972, the defendant Liddy made a telephone call from the District of Columbia to the defendant Barker at Barker Associates, Inc.

4. On or about May 10, 1972, in Rockville, Maryland, the defendant McCord purchased a Receiving System for McCord Associates, Inc., for which he paid $3,500 in cash, a device capable of receiving intercepted wire and oral communications.

5. On or about May 17, 1972, the defendant Barker made two telephone calls from Barker Associates, Inc. to the defendant Liddy at the Finance Committee to Re-Elect the President and two calls to the defendant Hunt within the District of Columbia.

6. On or about May 19, 1972, the defendant Hunt made one telephone call from the District of Columbia to the defendant Barker at Barker Associates, Inc. and one telephone call from the District of Columbia to the defendant Barker at his residence.

7. On or about May 22, 1972, the defendant Barker -- using the alias of Fran Carter, the defendant Martinez -- using the alias of G. Valdes, the defendant Sturgis -- using the alias of Joseph DiAlberti, and the defendant Gonzalez -- using the alias of Raul Goboy, traveled from Miami, Florida, to Washington, D.C.

8. On May 26, 1972, the defendant Liddy -- using the alias of George F. Leonard, the defendant Hunt -- using the

alias of Frank Carter, the defendant Martinez -- using the alias of Gene Valdes, the defendant Sturgis -- using the alias Joseph D'Alberti, and the defendant Gonzalez -- using the alias Raul Godoy, registered at the Watergate Hotel at 2650 Virginia Avenue, N.W., Washington, D.C.

9. On or about May 26, 1972, within the District of Columbia, the defendants Liddy, Hunt and McCord met.

10. On or about May 27, 1972, within the District of Columbia, the defendants Liddy, Hunt, and McCord inspected, surveyed, and reconnoitered the headquarters of Senator George McGovern at 410 First Street, S.E.

11. On or about May 29, 1972, and continuing through June 17, 1972, Room 723 at the Howard Johnson's Motor Lodge, located at 2601 Virginia Avenue, N.W., Washington, D.C. was rented and leased by the defendant McCord in the name of McCord Associates.

12. On or about June 5, 1972, the defendant Hunt made a telephone call from within the District of Columbia to the defendant Barker at Barker Associates, Inc.

13. On or about June 11-15, 1972, within the District of Columbia, the defendants Liddy, Hunt and McCord met and the defendant Liddy gave the defendant McCord about $1,600 in cash.

14. On or about June 12, 1972, in Miami, Florida, the defendants Martinez and Sturgis purchased surgical gloves.

15. On or about June 13, 1972, and June 15, 1972, in Miami, Florida, the defendant Martinez purchased film and other photographic equipment.

16. On or about June 15, 1972, the defendant Hunt made three telephone calls from the District of Columbia to the defendant Barker at Barker Associates, Inc.

17. On or about June 16, 1972, the defendant Hunt made a telephone call from within the District of Columbia to the defendant Barker at his residence.

18. On or about June 16, 1972, the defendant Barker made a telephone call to the defendant Hunt within the District of Columbia and to the defendant Liddy at the Finance Committee to Re-Elect the President.

19. On or about June 16, 1972, the defendant Barker -- using the alias F. Carter, the defendant Martinez -- using the alias G. Valdez, the defendant Sturgis -- using the alias J. DiAlberto, and the defendant Gonzalez -- using the alias R. Godoy, traveled from Miami, Florida, to the District of Columbia.

20. On or about June 17, 1972, within the District of Columbia the defendant McCord stole documents and papers belonging to the Democratic National Committee.

(In violation of 18 U.S.Code § 371)

SECOND COUNT:

On or about June 17, 1972, within the District of Columbia, the DEFENDANTS Liddy, Hunt, McCord, Barker, Martinez, Sturgis, and Gonzalez entered the rooms, that is, the offices and headquarters of the Democratic National Committee, with the intent to steal property of another.

(In violation of 22 D.C. Code § 1801(b))

THIRD COUNT:

On or about June 17, 1972, within the District of Columbia, the DEFENDANTS Liddy, Hunt, McCord, Barker, Martinez, Sturgis, and Gonzalez entered the rooms, that is, the offices and headquarters of the Democratic National Committee, with the intent to intercept willfully, knowingly, and unlawfully oral communications made within these rooms and wire communications received and sent from telephones located in these rooms. The terms "oral communication" and "wire communication" are used by the Grand Jury as they are defined in Title 18 U.S. Code § 2510.

(In violation of 22 D.C. Code § 1801(b))

FOURTH COUNT:

On or about June 17, 1972, within the District of Columbia, the DEFENDANTS Liddy, Hunt, McCord, Barker, Martinez, Sturgis, and Gonzalez willfully, knowingly, and unlawfully did endeavor to intercept oral communications made within the offices and headquarters of the Democratic National Committee.

(In violation of 18 U.S.Code § 2511)

FIFTH COUNT:

On or about June 17, 1972, within the District of Columbia, the DEFENDANTS Liddy, Hunt, McCord, Barker, Martinez, Sturgis, and Gonzalez willfully, knowingly, and unlawfully did endeavor to intercept wire communications received by and sent from telephones located in the offices and headquarters of the Democratic National Committee.

(In violation of 18 U.S. Code 2511)

SIXTH COUNT:

On or about June 17, 1972, within the District of Columbia, the defendants, McCord, Barker, Martinez, Sturgis, and Gonzalez did willfully possess an intercepting device, to wit, a white plastic box, 8-1/4 inches by 2-3/8 inches by 2-3/4 inches, with two labels on the front which read "ARI Smoke Detector" and "Fire Eqp. DO NOT MOVE", but which contained inside six batteries wired in series and a miniature radio transmitter with a microphone, the design of which said device rendered it primarily useful for the purpose of the surreptitious interception of an oral communication.

(In violation of 23 D.C. Code § 23-543(a))

SEVENTH COUNT:

On or about June 17, 1972, within the District of Columbia, the defendants McCord, Barker, Martinez, Sturgis, and Gonzalez did willfully possess an intercepting device, to wit, a miniature radio transmitter approximately 1-1/2 inches long, 1 inch wide, and 1/2 inch high, with two wires protruding from one end of the transmitter and which served to connect the transmitter in series with one wire of a telephone line and one wire protruding from the opposite end which served as a radiating antenna, the design of which said device rendered it primarily useful for the purpose of the surreptitious interception of a wire communication.

(In violation of 23 D.C. Code § 543(a))

EIGHTH COUNT:

From on or about May 25, 1972, and continuing up to on or about June 16, 1972, within the District of Columbia, the defendants Liddy, Hunt, and McCord willfully, knowingly, and unlawfully did intercept, endeavor to intercept and procure and cause the interception of wire communications received by and sent from telephones located in the offices and headquarters of the Democratic National Committee and used primarily during this period by Robert Spencer Oliver and Ida M. Wells.

(In violation of 18 U.S. Code § 2511)

United States Attorney
for the District of Columbia

A TRUE BILL:

Foreman of the Grand Jury.

XXXXXX
XXXXXX
XXXXXX

FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

_____ Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

☐ Deleted under exemption(s) _____ with no segregable material available for release to you.

☐ Information pertained only to a third party with no reference to you or the subject of your request.

☐ Information pertained only to a third party. Your name is listed in the title only.

☐ Document(s) originating with the following government agency(ies) _____, was/were forwarded to them for direct response to you.

_____ Page(s) referred for consultation to the following government agency(ies); _____ as the information originated with them. You will be advised of availability upon return of the material to the FBI.

35 Page(s) withheld for the following reason(s):
Pages were exact duplicates of pages contained in serials 1383, 1398(A), 1398(B), 1407, 1426 and 1427, which were processed earlier in the release

☐ For your information: _____

☒ The following number is to be used for reference regarding these pages:
EBF 139-4089-1731

XXXXXX
XXXXXX
XXXXXX

XXXXXXXXXXXXXXXXXXX
X DELETED PAGE(S) X
X NO DUPLICATION FEE X
X FOR THIS PAGE X
XXXXXXXXXXXXXXXXXXX

XXXXXX
XXXXXX

FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

_____ Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

☐ Deleted under exemption(s) _____ with no segregable material available for release to you.

☐ Information pertained only to a third party with no reference to you or the subject of your request.

☐ Information pertained only to a third party. Your name is listed in the title only.

☐ Document(s) originating with the following government agency(ies) _____ _____, was/were forwarded to them for direct response to you.

_____ Page(s) referred for consultation to the following government agency(ies): _____ _____ as the information originated with them. You will be advised of availability upon return of the material to the FBI.

59 Page(s) withheld for the following reason(s):
Enclosure was a computer printout, withheld due to size See note on cover letter for more information.

☐ For your information: _____

☒ The following number is to be used for reference regarding these pages:
EBF 139-4089-2052

XXXXXX
XXXXXX
XXXXXX

XXXXXXXXXXXXXXXXXXX
DELETED PAGE(S)
NO DUPLICATION FEE
FOR THIS PAGE
XXXXXXXXXXXXXXXXXXX

FBI/DOJ

XXXXXX
XXXXXX
XXXXXX

FEDERAL BUREAU OF INVESTIGATION

FOIPA DELETED PAGE INFORMATION SHEET

_____ Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

☐ Deleted under exemption(s) _____ with no segregable material available for release to you.

☐ Information pertained only to a third party with no reference to you or the subject of your request.

☐ Information pertained only to a third party. Your name is listed in the title only.

☐ Document(s) originating with the following government agency(ies) _____ _____, was/were forwarded to them for direct response to you.

X Page(s) referred for consultation to the following government agency(ies); CIA _____ _____ as the information originated with them. You will be advised of availability upon return of the material to the FBI.

_____ Page(s) withheld for the following reason(s):

_____

_____

☐ For your information: _____

_____

☒ The following number is to be used for reference regarding these pages:
EBF-139-4089-2146

XXXXXX
XXXXXX
XXXXXX

XXXXXXXXXXXXXXXXXXX
X DELETED PAGE(S) X
X NO DUPLICATION FEE X
X FOR THIS PAGE X
XXXXXXXXXXXXXXXXXXX

4-750 (2-7-79)

XXXXXX
XXXXXX
XXXXXX

FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

_____ Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

☐ Deleted under exemption(s) _____ with no segregable material available for release to you.

☐ Information pertained only to a third party with no reference to you or the subject of your request.

☐ Information pertained only to a third party. Your name is listed in the title only.

☐ Document(s) originating with the following government agency(ies) _____ _____, was/were forwarded to them for direct response to you.

_____ Page(s) referred for consultation to the following government agency(ies); _____ _____ as the information originated with them. You will be advised of availability upon return of the material to the FBI.

__X__ Page(s) withheld for the following reason(s):
Enclosure was a computer print out, withheld due to size. See note on cover letter for more information.

☐ For your information: _____

_____

☒ The following number is to be used for reference regarding these pages:
EBF 139-4089-2171

XXXXXX
XXXXXX
XXXXXX

XXXXXXXXXXXXXXXXXXX
X DELETED PAGE(S) X
X NO DUPLICATION FEE X
X FOR THIS PAGE X
XXXXXXXXXXXXXXXXXXX

FBI/DOJ

XXXXXX
XXXXXX
XXXXXX

FEDERAL BUREAU OF INVESTIGATION

FOIPA DELETED PAGE INFORMATION SHEET

_____ Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

☐ Deleted under exemption(s) _____ with no segregable material available for release to you.

☐ Information pertained only to a third party with no reference to you or the subject of your request.

☐ Information pertained only to a third party. Your name is listed in the title only.

☐ Document(s) originating with the following government agency(ies) _____, was/were forwarded to them for direct response to you.

_____ Page(s) referred for consultation to the following government agency(ies); _____ as the information originated with them. You will be advised of availability upon return of the material to the FBI.

X Page(s) withheld for the following reason(s):
Enclosure withheld in its entirety inasmuch as it is a publication that can be obtained at Government Printing Office

☐ For your information: _____

☒ The following number is to be used for reference regarding these pages:
EBF 139-4089-2608

Hearings Before the Select Committee on Presidential Campaign Activities of the U.S. Senate. 93rd Congress 1st Session Phase I. Watergate Investigation Washington D.C. May 17, 18, 22, 23 & 23, 1973 Book I.

XXXXXXXXXXXXXXXXXXX
X DELETED PAGE(S) X
X NO DUPLICATION FEE X
X FOR THIS PAGE X
XXXXXXXXXXXXXXXXXXX

XXXXXX
XXXXXX
XXXXXX

JAMES W. McCORD, JR.
7 WINDER COURT
ROCKVILLE, MARYLAND 20850

October/0, 1973

Massachusetts Bar Association
One Center Plaza
Boston, Massachusetts 02108

Dear Sirs:

Reference is made to my complaint to the Massachusetts bar association dated September 25, 1973, listing the following complaints against attorneys Gerald Alch and F. Lee Bailey:

1. Perjury by Alch before the Senate Watergate Committee.
2. Ineffective counsel by Alch and Bailey before and during the Watergate trial of January 1973.
3. Conflict of interest by Alch and Bailey before and during the trial.
4. Other matters denying me due process of law and proper legal representation by Alch and Bailey.

This is to request an amendment to the above complaint to add the following additional complaints:

5. That Gerald Alch was a party to, and aided and abetted, the harassment and tampering with, a party to a Court proceeding, James W. McCord, Jr., prior to and during the January 1973 Watergate trial, a violation of Title 18 U.S. Code Section 1503.

6. That Gerald Alch was a party to, and aided and abetted acts of bribery committed beginning January 8, 1973, a violation of Title 18 U. S. Code Section 201 (d).

7. That Gerald Alch and F. Lee Bailey were parties to a conspiracy to deny James W. McCord, Jr., his federal civil rights, namely his 4th amendment right against unreasonable search and seizure, his 5th amendment rights to a fair trial and due process, his 6th amendment rights to counsel, and his 14th amendment right to equal protection of the law, all violations of Title 18 U. S. Code section 241.

The specific acts which constitute the violations cited in paragraphs 5., 6., and 7. are set forth in paragraph 10, page 5, of affidavit of James W. McCord, Jr. filed October/0, 1973 in U. S. District Court at Washington, D. C., a copy of which is attached. An earlier affidavit of August 9, 1973 regarding ineffective counsel by Alch and Bailey is also attached.

Inasmuch as the federal misprision statute requires that a person having knowledge of the commission of felonies communicate such knowledge to a judge and other civil authority, copies of this letter are being furnished to the Chief Judge of the U.S. District Court of the District of Columbia, and to the Director, Federal Bureau of Investigation, Washington, D. C., who is charged with the investigation of violations of the federal statutes cited above. In addition, a copy of this letter is being furnished to the Senate Select Committee on Presidential Campaign Activities inasmuch as it has purview over the perjury committed by attorney Alch in testimony before the Committee in May 1973, referred to in item 1. above. I am available for interview by the Federal Bureau of Investigation and the Senate Select Committee on these matters at any time.

Relevant pages of the sworn testimony before the Senate Select Committee are cited in the motions and affidavits attached herewith. Further relevant material is set forth in an attached Summary of the Case of James W. McCord, Jr. prepared on September 25, 1973 for other purposes, by the writer.

Very truly yours,

James W. McCord, Jr.

James W. McCord, Jr.
7 Winder Court
Rockville, Maryland 20850
Telephone 340-8110

Attachments

[illegible] Exhibit

~~May 4, 1973~~
May 4, 1973

Subject:
~~SUBJECT~~: Pressure on the Defendants to Blame the Watergate Operation on CIA; And Other Matters

I have previously referred to political pressure which was applied to the seven Watergate defendants.

One area of pressure which was applied was that of December, 1972, in which intense pressure was applied on some of the defendants to falsely claim for purposes of a defense during the trial in January, 1973, that the Watergate operation was a CIA operation. This would have had the effect of clearing the Committee for the Re-Election of the President and the White House of responsibility for the operation.

In two separate meetings in December, 1972, it was suggested that I use as my defense during the trial the false story that the operation was a CIA operation. I refused to do so.

I was subsequently informed by Bernard Barker just before the trial began in January, 1973 that E. Howard Hunt and other unnamed persons in Miami had brought intense pressure to bear against the Cuban-Americans who were defendants to use the same story as their defense, that my stand taken against it had been the decisive factor causing this ploy to be dropped, and that Hunt was very bitter about it. Hunt's bitterness was later revealed early in the trial when the Cubans advised that Hunt had said that I "was responsible for our being in the plight we were in for not going along with the CIA thing."

At a later time, I heard from Barker that he had been told that Cuban money was suspected of being funnelled into the McGovern Campaign. I have no knowledge that this suspicion was ever verified.

The two December, 1972 meetings with me were on December 21, 1972 and on December 26, 1972. Present at the first meeting with me at the Monocle Restaurant in Washington, D.C., were Gerald Alch and Bernard Shankman, my attorneys. Present at the second meeting was Gerald Alch, and the meeting was at his offices in Boston, Massachusetts.

In the first meeting, Alch stated that he had just come from a meeting with William O. Bittman, attorney for E. Howard Hunt, and I received the impression in the discussion that followed that Alch was conveying an idea or request from Bittman. There followed a suggestion from Alch that I use as my defense during the trial the story that the Watergate operation was a CIA operation. I heard him out on the suggestion which included questions as to whether I could ostensibly have been recalled from retirement from CIA to participate in the operation. He said that if so, my personnel records at CIA could be doctored to reflect such a recall. He stated that Schlesinger, the new Director of CIA, whose appointment had just been announced, "could be subpoenaed and would go along with it." I had noted in the newspapers of that day, December 21, 1972, that it had been announced by the White House that Schlesinger would take over as Director of CIA, and that it had been decided that Pat Gray would be supported by the White House to be permanent Director of the FBI.

Alch went on to mention testimony, or a statement, made to federal authorities by Gary Bittenbender, a Metropolitan Police Department undercover police officer, whom I had seen at the Courthouse on June 17, 1972, when the five of us who were arrested were arraigned, in which Bittenbender purportedly claimed that I had told him that day that the Watergate operation was a CIA operation. I advised Alch that if Bittenbender had made such a statement under oath that he had perjured himself, and that I had not made such a claim. Bittenbender can be interviewed to determine the circumstances under which he had made such a statement, and whether his statement was in fact an honest error of impressions based on events which occurred in Court on that day, which could have misled him. Those were that some of us were identified in the hearing in Court as formerly connected with CIA. Alch went on to mention the name of Victor Marchetti whom he he was considering calling to describe CIA training in which its employees were trained to deny CIA sponsorship of an operation if anything went wrong and its participants were arrested. He also requested that I meet with him in Boston on December 26, 1972 which I did. There he opened the discussion by showing me a written statement of an interview with Bittenbender in which Bittenbender claimed that on June 17, 1972 I had told him that the Watergate operation was a CIA operation. I repeated to Alch my earlier statement, that Bittenbender had either perjured himself, or had made a

false statement to federal authorities. I told Alch that I would not use as my defense the story that the operation was a CIA operation because it was not true. In addition, I told him that even if it meant my freedom, I would not turn on the organization that had employed me for 19 years, and wrongly deal such a damaging blow that it would take years for it to recover from it, and finally that I believed the organization to be one of the finest organization of any kind in the world and would not let anyone wrongly lay the operation at the feet of CIA.

By now, I was completely convinced that the White House was behind the idea and ploy which had been presented, and that the White House was turning ruthless, and would do whatever was politically expedient at any one particular point in time to accomplish its own ends.

In addition, I earlier had determined to tell the true story of the Watergate operation, and it was now only a matter of a propitious time to do so.

On Friday, December 29, 1972, I visited Bernard Shankman's office in Washington, D.C., and let him read a statement which I had prepared, which I proposed to read to the press on December 30, 1972, releasing Alch as my attorney. I believed that although Shankman had been present at the first meeting he was not a party to the events previously described. Shankman suggested that I give Alch an opportunity to meet with me and explain why he had undertaken the course which he had, and such a meeting was set up for Tuesday, January 2, 1973 in Washington. Alch failed to appear, and I delivered a letter to Judge Sirica, releasing Alch as my attorney. Alch immediately called, asked to meet with me on January 3, 1973 and asked to continue as my attorney. We met and Alch stated that he, in conveying the request made of me on December 21 and December 26, 1972, was acting out of what he felt to be was my own best interests. By this time, I was convinced that the ploy to lay the operation at CIA's doorstep had been headed off, and agreed to give him a second chance.

By this time, I was also convinced that the White House had fired Helms in order to put its own man in control at CIA, but as well to lay the foundation for claiming that the Watergate operation was a CIA operation, and now to be able to claim that "Helms had been fired for it." There had been indications as early as July that the Commitee for the Re-Election of the President was claiming that the Watergate operation was a CIA operation. Mrs. Hunt had told me in late July 1972 that Paul O'Brien had told Howard Hunt in July that the Committee to Re-Elect the President had originally informed him that the Watergate operation was a CIA operation. Mrs. Hunt said that her husband had denied to O'Brien that it was a CIA operation. By early December 1972, it appeared that the White House was beginning to make its move. The events of December 21 and December 26, 1972 only confirmed this in my mind.

Further, based on an earlier discussion with Robert Mardian in May, 1972, it appeared to me that the White House had for some time been trying to get political control over the CIA assessments and estimates, in order to make them conform to "White House policy." One of the things this meant to me was that this could mean that CIA estimates and assessments could then be forced to accord with DOD estimates of future U.S weapons and hardware needs. This could be done by either shifting an intelligence function to DOD from CIA, or by gaining complete political control over it at CIA. Among other things, this also smacked of the situation which Hitler's intelligence chiefs found themselves in, in the 1930's and 1940's, when they were put in the position of having to tell him what they thought he wanted to hear about foreign military capabilities and intentions, instead of what they really believed, which ultimately was one of the things which led to Nazi Germany's downfall. When linked with what I saw happening to the FBI under Pat Gray -- political control by the White House -- it appeared then that the two government agencies which should be able to prepare their reports, and to conduct their business, with complete integrity and honesty, in the national interest, were no longer going to be able to do so. That the nation was in serious trouble, has since been confirmed by what happened in the case of Gray's leadership of the FBI.

E. Howard Hunt has additional information relevant to the above. Hunt stated to me on more than one occasion in the latter part of 1972, that he, Hunt, had information in his possession which "would be sufficient to impeach the President." In addition, Mrs. E. Howard Hunt, on or about November 30, 1972, in a personal conversation with me, stated that E. Howard Hunt had just recently dictated a 3-page letter which Hunt's attorney, William O. Bittman, had read to Kenneth Parkinson, the attorney for the Committee to Re-Elect the President, in which letter, Hunt purportedly threatened "to blow the White House out of the water." Mrs. Hunt at this point in her conversation with me, also repeated the statement which she, too, had made before, which was that E Howard Hunt had information which could impeach the President.

I regret that this memorandum has taken this length to set forth. In view of the nature of the information which I had to furnish, however, it appeared that there was no other way to adequately set this material forth, and to do so in the proper context, without deleting material highly relevant to the events being reported. I shall be glad to appear and answer questions under oath on the material which appears in this memorandum.

JAMES W. McCORD, JR.

JWMcC:crr

October 9, 1973

Massachusetts Bar Association
One Center Plaza
Boston, Massachusetts 02108

Dear Sirs:

Reference is made to my complaint to the Massachusetts bar association dated September 25, 1973, listing the following complaints against attorneys Gerald Alch and F. Lee Bailey:

1. Perjury by Alch before the Senate Watergate Committee.
2. Ineffective counsel by Alch and Bailey before and during the Watergate trial of January 1973.
3. Conflict of interest by Alch and Bailey before and during the trial.
4. Other matters denying me due process of law and proper legal representation by Alch and Bailey.

This is to request an amendment to the above complaint to add the following additional complaints:

5. That Gerald Alch was a party to, and aided and abetted, the harassment and tampering with, a party to a Court proceeding, James W. McCord, Jr., prior to and during the January 1973 Watergate trial, a violation of Title 18 U.S. Code Section 1503.

6. That Gerald Alch was a party to, and aided and abetted acts of bribery committed beginning January 8, 1973, a violation of Title 18 U. S. Code Section 201 (d).

7. That Gerald Alch and F. Lee Bailey were parties to a conspiracy to deny James W. McCord, Jr., his federal civil rights, namely his 4th amendment right against unreasonable search and seizure, his 5th amendment rights to a fair trial and due process, his 6th amendment rights to counsel, and his 14th amendment right to equal protection of the law, all violations of Title 18 U. S. Code section 241.

The specific acts which constitute the violations cited in paragraphs 5., 6., and 7. are set forth in paragraph 10, page 5, of affidavit of James W. McCord, Jr. filed October 9, 1973 in U. S. District Court at Washington, D. C., a copy of which is attached. An earlier affidavit of August 9, 1973 regarding ineffective counsel by Alch and Bailey is also attached.

Inasmuch as the federal misprision statute requires that a person having knowledge of the commission of felonies communicate such knowledge to a judge and other civil authority, copies of this letter are being furnished to the Chief Judge of the U.S. District Court of the District of Columbia, and to the Director, Federal Bureau of Investigation, Washington, D. C., who is charged with the investigation of violations of the federal statutes cited above. In addition, a copy of this letter is being furnished to the Senate Select Committee on Presidential Campaign Activities inasmuch as it has purview over the perjury committed by attorney Alch in testimony before the Committee in May 1973, referred to in item 1. above. I am available for interview by the Federal Bureau of Investigation and the Senate Select Committee on these matters at any time.

Relevant pages of the sworn testimony before the Senate Select Committee are cited in the motions and affidavits attached herewith. Further relevant material is set forth in an attached Summary of the Case of James W. McCord, Jr. prepared on September 25, 1973 for other purposes, by the writer.

Very truly yours,

James W. McCord, Jr.
7 Winder Court
Rockville, Maryland 20850
Telephone 340-8110

Attachments

TO: Judge John J. Sirica November 19, 1974

SUBJECT: Prosecutorial Misconduct and a Lawyers' Conspiracy

For the second time in Watergate matters, I feel compelled to write to you concerning matters involving perjury, the concealment of evidence, and the involvement of others in the Watergate conspiracy, this time the cover up conspiracy.

You will recall that all of the information I provided to you in my letter of March 19, 1973, proved out through subsequent investigation. I am convinced that the same will occur if the information set forth below, and in the attached memoranda, is properly pursued. It hardly appears that the Special Prosecutor's Office is the proper body to do so.

I contend, and assert on information and belief that the following has occurred:

1. Perjury was committed by my former attorney, Gerald Alch, before the Senate Watergate Committee on May 23, 1973, in matters involving him and Mr. William O. Bittman on January 8, 1973, in connection with discussions about executive clemency by Alch with me that day, at Bittman's request according to Alch. Alch's perjury is set forth in Attachment " A ", section II.

2. Alch's perjury on this subject, executive clemency, had a purpose, and his perjury is material and relevant to the involvement in a criminal cover up conspiracy of both Alch and Bittman. Alch's purpose was to conceal the involvement of both men in that conspiracy, I contend.

3. I believe that both Alch and Bittman perjured themselves before a federal grand jury on this subject--otherwise had they admitted the true events and discussions which had occurred with me on January 8, 1973, and between themselves on that date, both would have been indicted. I believe that Alch's original perjury before the Senate, and such other perjury on this matter of both Alch and Bittman before a grand jury was, therefore, mutually protective in nature.

4. It is not immaterial and irrelevant to this issue that William O. Bittman had discussed executive clemency for Hunt with Charles Colson within the five days preceeding January 8, 1973, according to John Dean's Senate testimony.

5. It is not immaterial and irrelevant, and it is probative, that Presidential tapes, known to the Special Prosecutors for some weeks, reflect that President Richard Nixon was discussing executive clemency for Hunt with Charles Colson on the very same day that I have asserted under oath that Alch was discussing executive clemency with me, allegedly for Bittman, on January 8, 1973.

6. It is not immaterial or irrelevant, and it is probative that Alch told me on the afternoon of January 8, 1973, in Judge Sirica's courtroom, that William O. Bittman wanted to discuss executive clemency with me and Bernard

Barker after court that same afternoon; that I told Alch that I had no interest in doing so; that Alch counseled me to do so; that Bernard Barker rode with Alch, Shankman and me in the taxicab that afternoon from court to Bittman's office address; that Alch took me to Bittman's office, and disappeared with Bittman, and reappeared telling me that I would be hearing from " Jack " that evening by telephone. The " Jack " was a reference to John Caulfield, a White House emisary, who during subsequent contacts during the trial coerced and tampered with a witness to a court proceeding, McCord, to try to get McCord to plead guilty and take executive clemency--or as it is referred to in the Hunt-Bittman memorandum of November 1972, take a " pardon ".

7. It is interesting to note that none of the men involved in this conspiracy on that day, January 8, 1973, have been indicted by the Special Prosecutors - not Bittman, not Alch and not Caulfield.

Yet their acts were part of the conspiratorial chain of overt acts of that day, and of Caulfield and Ulasewicz's illegal contacts with McCord that were to follow. Ulasewicz in fact admitted before the Senate that his contacts with McCord on January 8, 1973, was an obstruction of justice. See book page 291.

I was in fact contacted approximately 13 times by Caulfield and Ulasewicz during the trial, pressured by both to plead guilty and to take the pardon referred to in Hunt's memorandum given to Bittman.

8. John Caulfield, in addition to Alch, committed perjury before the Senate Watergate Committee, in denying that he tried to get me to plead guilty during his meetings in January 1973. Caulfield's perjury is also reflected in Attachment " A ".

The Special Prosecutors have artfully avoided questioning me regarding Caulfield's perjury, yet our directly opposing statements appear in sworn Senate testimony, and they, the Prosecutors, proposed to use Caulfield as a government witness in this second cover up trial as recently as October, 1974.

9. Paul O'Brien testified before the House of Representatives on July 31, 1974 that on January 8, 1973, he had on January 8, 1973 contacted Bittman with a message for McCord. Dean's Senate testimony indicated that O'Brien's message was in connection with executive clemency for McCord. See House Judiciary Committee testimony of O'Brien, Book I, page 168.

10. It has appeared to me for approximately two years that William O. Bittman was the " control point " or coordinator for the White House and CRP not only over some of the defense attorneys, including Alch, in the original Watergate trial, but over the conveyance of messages of executive clemency to most of the defendants. It has been testified to in the second cover up trial and before the Senate that Bittman discussed executive clemency for Hunt with Charles Colson; and Alch's discussion with me to the effect that Bittman wanted to talk with Barker as well as me on January 8, 1973, about executive clemency leads me to believe that Barker was as well to convey Bittman's words on this subject to the other original defendants Martinez, Gonzales and Sturgis, leaving only Liddy uncontacted directly or indirectly.

11. Accountings furnished by Bittman of Mrs. Hunt's in September 1972 reflect legal funds designated for " F. Lee Bailey ". Senate testimony indicated that these funds came to the defendants at the request of John Mitchell.

The Special Prosecutors have introduced Presidential tapes of March 22, 1973, involving President Nixon and some of the defendants now on trial. It is material and relevant that John Dean testified before the Senate at a luncheon on March 22, 1973, that,

" John Mitchell raised the fact that F. Lee Bailey, who had been very helpful in dealing with McCord had a problem he would like to bring up. (SSC Book 3, page 1001).

Presidential tapes of March 21, 1973, and of April 14, and April 15, 1973, contain discussions first of John Dean with President Nixon, and later of President Nixon and some of his aides now on trial reflecting that John Mitchell was " close " to F. Lee Bailey and of the possibility that Mitchell, according to Dean and Nixon, might use Bailey as his defense attorney in any forthcoming indictment of Mitchell. Then Attorney General Richard Kleindienst was in on one of the April 1973 conversations with Nixon and in response to Nixon's comments that Mitchell was " close " to F. Lee Bailey, Kleindeinst responded, " I know. "

12. In connection with my statement in paragraph 10 above, that I believed that Bittman was the " control point " over some of the first Watergate trial defense attorneys, or attempted to be such, Henry Rothblatt, attorney for the four Miami men, made a statement in my presence, in the presence of Bernard Barker, Alch and Shankman on the evening of January 7, 1973, that,

" Bittman should get out of the act."

This statement was made in connection with a statement made to me by Barker in that meeting that Hunt had received a promise of Executive clemency but that he, Barker could not rely on word, third hand, that he, Barker, would also receive executive clemency.

I have always believed that Barker's taxi ride to Bittman's office the next day, January 8, 1973, was in response to Barker's comment that he would need direct word about executive clemency, from someone other than Hunt. Bittman appeared to me to be filling that role, based on what Alch told me on January 8, 1973.

13. My allegations in the above paragraphs both about Alch and Bailey and about Bittman have always fallen on deaf ears with the Special Prosecutors.

The Special Prosecutors have in fact undertaken to defend in writing before the Court of Appeals the actions of Gerald Alch, rather than to probe the conflicts between his sworn testimony and my own.

Never have the Special Prosecutors called me before the grand jury either to probe these conflicts, and the involvement of Bittman, but about anything else. They appear to want to keep the grand jury record free of anything I might say.

14. Neither did former prosecutor Earl Silbert ever bring McCord before the Grand Jury regarding his allegations of May 4, 1973, in a sworn statement about Alch, and about the November 1972 Hunt- Bittman memoranda. This non-action by Silbert appeared to me to be protective of Alch and Bittman.

15. Special Prosecutor Richard Ben Veniste indicated to me during his

20. With all of the above, and attached information which gives rise to reasonable grounds for believing that Alch and Bittman, and in McCord's opinion [illegible] Lee Bailey were engaged in a criminal conspiracy as a part of the cover-up, Mr. Ben-Veniste's response [illegible] that McCord just has a "grievance" against Mr. Alch and that McCord only wants to use the courtroom as a forum for that grievance.

It should be readily apparent that McCord's allegations are [illegible] --and is easily corroborable by calling the people I have named to the stand in a hearing.

[illegible] Ben-Veniste [illegible] McCord to [illegible] this second cover-up [illegible] does not serve [illegible] accomplished before the trial jury.

21. It is also significant in discussing what the Special Prosecutors have [illegible] Special Prosecutors [illegible] and [illegible] and of other grand jury witnesses, whose testimony is favorable to McCord's case on appeal. The Court of Appeals has none of it because of this prosecutorial concealment, in spite of the rulings in Brady v. Maryland, [illegible] v. Illinois, as well [illegible] of lower court rulings placing the burden on the prosecutors to place on a defendants record newly discovered evidence which he could have no way of knowing about, either in scope or content.

22. It is further significant that the Special Prosecutors have concealed from the Appeals Court record of McCord, as they did earlier of Liddy's, all Presidential tapes, even though the Special Prosecutors have had many of these tapes for months and many are favorable to McCord's appeals arguments.

23. It is additionally significant that McCord believes that the Special Prosecutors have kept off of the appeals record of Barker the sworn Senate testimony, and later statements given by McCord and of Henry Rothblatt to the Special Prosecutors in the summer of 1973, that pressure and coercion had been brought to bear upon the Miami men to plead guilty in January 1973.

24. The pattern of concealment and nonfeasance by the Special Prosecutors thus affects not only the possible indictment of Alch, Bittman and Bailey, preventing that from happening; but also the concealment of evidence from the appeals court favorable to and affecting the cases of Gordon Liddy, James McCord, and the Miami men who have appealed their conviction.

25. Since the Special Prosecutors have chosen not to call me as a prosecution witness, nor plan to do so as a court witness, [illegible] they would apparently rather lose certain counts in the charges in the indictment rather than to have McCord's information disclosed to the jury. It can only appear to me that they are thus trying to protect Bittman and Alch, and possibly Bailey, from indictment; my testimony on these issues can implicate no others, other than the prosecutors themselves.

26. I contend that it would be worth an examination of the grand jury minutes on these issues described in this memorandum [illegible] attachments to see just how adequately or incompletely [illegible] have pursued these matters.

27. The assertions and contentions I have made, many of which I ascribe to be facts, can be corroborated and verified by calling under oath John Dean; Paul O'Brien; William O. Bittman; Bittman's former legal secretary in late 1972 Pat, last name unknown; Bernard Shankman; Bernard Barker; Henry Rothblatt; F. Lee Bailey; Austin Mittler and others from the law firm of Hogan and Hartson where Alch deliberately made his office during the January 1973 trial. I assume that you would also want the testimony of Mr James Neal and Mr. Richard Ben Veniste under oath.

Conclusion

To restate, McCord contends;

a) That the special prosecutors office, in Mr. James Neal, Mr. Richard Ben Veniste, and possibly others, are engaged in a cover up conspiracy of their own.

b) That there is clearly sufficient support evidence available in this memorandum and its attachments, and through sworn testimony which can be had in court from John Dean and others named in this memorandum to support my charges of 1) perjury by Alch 2) possible perjury by Bittman, 3) a lawyer's conspiracy -- a criminal cover up conspiracy involving William O. Bittman, Gerald Alch and F. Lee Bailey in 1972 and 1973.

c) That McCord first raised the Hunt-Bittman memorandum of November 1972 *in a memorandum of May 4, 1973, which was delivered to prosecutor* Earl Silbert on that date. That memorandum and subsequent statements by McCord to James Neal and to Richard Ben Veniste as late as August 1974 provided them with sufficient leads to go to the law firm of Hogan and Hartson in interviews of personnel there which could well have disclosed the existence of the memorandum *as much as 19 months ago for* Silbert and 15 months ago for Neal and Ben Veniste.

d) That the matters referred to in this memorandum, and in the Hunt- Bittman memorandum, are all interrelated, since they reflect a continuing criminal conspiracy by Bittman, Alch and Bailey in 1972 and into 1973.

e) That the appearance of the desire by the Special Prosecutors, and earlier Earl Silbert, not to pursue the materia provided by McCord in Senate Watergate testimony and in prosecutorial interviews, has had the effect of preventing the indictment of Alch, Bittman, and Bailey, either on perjury or conspiracy, or both, and thus the prosecutorial action appeared deliberate, and protective in nature.

James W McCord Jr

James W. McCord, Jr.
7 Winder Court
Rockville Maryland 20850

Attachments " A " and " B "

INDEX

in a kaleidoscope of activity. There I gave my true name, and filled in on police records the fact of my CIA retirement status, a fact well known by that time, early on the afternoon of June 17th. By five p.m., we were waiting in what was to become a familiar "tank", a large cell holding up to 100 prisoners, awaiting either arraignment or transportation to local prison facilities. After talking with bail agency representatives, we were taken into open court for the first time and there were to meet the prosecutors with whom we were to become well acquainted in the months to follow. In a brief hearing on the charge of the offense, bail was recommended for $100,000 for each of us by the prosecutors. We often wondered what it would have been had we given false names. In that and a series of later hearings the next week, bail was finally to be set for me at $30,000, ten percent in cash.

After arraignment we were off to the D.C. Jail, a 100-year old prison, dank and reminiscent of the European dungeons of a century ago. Prison officials did the best they could with it, but they had little to work with, and with overcrowded conditions, it was often to house up to 2700 prisoners in a building designed for a little over half that number. I have described the prison conditions there in other chapters.

For the next week, I was to be housed with the other four Miami men while efforts were being made by our families for bail and in hearings, where I was to see many of the newsmen and women who I also came to know well in the months ahead, particularly Bob Jackson of the *Los Angeles Times* (to whom I began to tell the Watergate story, beginning in January 1973, during trial).

After a week in jail, it appeared that the men were being abandoned. Apparently CRP was in trauma. I was able to arrange bail and return home to begin to size up where we were and what was to come next. Barker's wife and daughter were desperately seeking bail help for him in Miami, and all of the men were beginning to plan for other attorneys because of the workload of five men for the one attorney, Joseph Rafferty, Jr., who had been tied up solidly for a week in all the hearings in our case.

As I began to size up the situation, it was clear that I needed an attorney, located away from Washington, who would be least subject to political pressure from the White House, for I sensed at that early date an intense desire by CRP and the White House to keep us under control, and to keep the investigation from spreading into the White House itself. After considering several attorneys, I finally turned to F. Lee Bailey's law firm in Boston. This was the most serious mistake I was to make in the many months to come.

But what went wrong in Watergate, why the arrests? It's the most commonly asked question. The answer is very simple — there were a series of mistakes which Liddy, Hunt, Barker and I made. The first Liddy and Hunt made in not aborting the operation when Barker reported to Liddy and Hunt that the door had been found taped the first time. The second mistake was mine in not removing the ground floor tape, even though we had left three such

CHAPTER 20

June 28, 1972: Caulfield and Ulasewicz, I

On June 28, 1972, I cut loose from Joseph Rafferty, Jr., who as legal counsel was representing five defendants and who obviously had too much to do.

My termination of his services obviously attracted the interest of the White House.

During the day on June 29, 1972, a note was left in my mailbox by an individual I was to learn was Anthony Ulasewicz, the "Mr. Rivers" of the Watergate coverup. Ulasewicz's note requested that I go to a nearby telephone booth on Route 355 near my home that afternoon for a call. I did so, and heard that the unidentified caller was a friend of John Caulfield and that Caulfield wanted to talk to me, which he did a day or so later. Caulfield's message was one of concern about me, he said. This was to be later clarified as a "pulse taking" call to see what my mood was. Caulfield went on to say he was going overseas for a period of time and that if I needed to reach him for any reason, simply to call his home and leave a message that I wanted to reach him, and he would be back in touch immediately. It was later to be disclosed that Fred Fielding of the White House had been sent to London to interview Hunt's former secretary, while with "the Plumbers," Kathleen Chenow. My assumption when I read of this was that Caulfield was in some way involved with that trip.

I was to hear much more from Caulfield in January 1973.

CHAPTER 21

The New Lawyer

On June 29, 1972, my attorney Rafferty told me that I could request a deferment of the hearing which had been scheduled in court until I had obtained another attorney, and I did so. That same morning I called F. Lee Bailey's office in Boston and one of his partners, Gerald Alch, answered the telephone, stating that Bailey was out of the area and involved in a trial. He listened to my description of the case and said that he would be glad to handle it. Arrangements were made for me to come to Boston, which I did on Saturday, July 1, 1972. There for an hour, I described the case to him in detail, detailing Mitchell's role as the Attorney General who had approved the operation. I returned to Washington that afternoon.

Some have asked why I picked F. Lee Bailey's law firm. My major concern was to choose a firm away from Washington so that they would be out from

under the thumb of the White House and less subject to any type of White House pressure. Boston seemed far enough away and Bailey was known as a criminal lawyer of some competence. Little did I know that he was to come under Federal investigation for mail fraud, while representing me, and to be indicted in May, 1973, just before the Senate Watergate hearings began. It appeared to me later, based on Dean's testimony, that Bailey was using me as a hostage against Federal prosecution, and to get political favors from the Administration. My engagement of Alch was to be the beginning of an interesting legal relationship, one I'll never forget.

I was to receive a letter the next week from Alch spelling out the terms of his fee. A total of $25,000; $15,000 within 30 days and the balance in a total of 45 days, all before the trial was to start. I had money left over from the Watergate operation, unspent, and used it, nearly $19,000, for Alch's fee, paying him all in $100 bills. He never asked where the money came from.

CHAPTER 22

The CRP Cover up and the Attorneys, I

I received a call from E. Howard Hunt in the latter part of July, 1972, by telephone, and in a conversation with him learned that financial support in the form of legal fees and a continuation of salary was going to be forthcoming shortly. I was appreciative of the help because Alch had said that he would require $25,000 in cash within 45 days, which was a month and a half before the indictments were to come down, and there would be other costs associated with a Democratic National Committee suit, and other expenses. On July 20, 1972, Mrs. Hunt delivered an initial sum of money to me at the Lakewood Country Club near my home about eight o'clock one evening, in a parking lot adjoining a tennis court there. We had a moment to talk about our situation and she informed me that she had been to see Paul O'Brien, who had been engaged by the CRP as their lawyer, and he had told her that CRP had told him that the operation was a CIA operation. He said that he did not know differently until she talked with him and told him that it involved not CIA but the former Attorney General John Mitchell and John Dean, Counsel to the President. This was the CRP line at the time — that the operation was a CIA operation.

Mrs. Hunt told me another item of information — that the prosecution was planning to charge that Liddy stole the money, or misused other funds allocated to him, and in turn bribed Hunt and McCord to participate in the Watergate operation. The implications of this information came rolling in like a tidal wave — there was a completed circle in the information coming out of secret minutes of the Grand Jury run by Earl Silbert. Somehow that

vestigation for mail fraud, and was indicted for it in May 1973. Calls from Bailey or Alch to John Mitchell, or CRP attorneys Paul O'Brien or Kenneth Parkinson, if my case was discussed therein, would have been highly important to know, and would have been corroborative of Dean's assertions indicating collusion between these men.

John Mitchell and Richard Nixon had plenty of motivation for intercepting my telephone calls. What I was saying on the telephone was of the greatest possible concern to them. The ability of a government to remain in power hung in the balance, dependant on my disclosures. This was particularly true just before the November 1972 elections, when the signs of the wiretapping of our telephones were the greatest, and when the re-election of a President was at stake.

CHAPTER 25

Early October, 1972: "Taking the Pulse ... Establishing the Rapport ... the Attorneys, II"

On a Wednesday early in October 1972, Alch was in Washington working in Bittman's office planning for the trial — "trial strategy." He had asked me to meet him at the Colonial Restaurant, 1820 M Street, NW for lunch which I did. There he opened the conversation with a most unusual statement which was "I've just come from Bittman's office. Nobody gets up on that (witness) stand during trial. In return they will get executive clemency, money while in prison and rehabilitation afterwards." He repeated it, "Nobody", with emphasis on the nobody for my benefit, and looking directly at me, "gets up on that stand." It was more an order than a statement. My reaction to myself was "well, this is interesting, what are they up to now." (William O. Bittman was Hunt's attorney.) Getting no reaction from me on this opener, Alch launched into his next interesting comment. "Why aren't you taking the money from Mrs. Hunt?" he asked. I went over my concerns that the whole business had the appearance of a control mechanism to keep the men quiet prior to the Nixon election by the use of money as a weapon and a tool. Between that concern and the surveillance I had experienced on the 19th of September, I had decided to take no further money in order to be completely free to pursue whatever course of action my conscience dictated without being obligated. Alch berated me and then asked me a question, rather unusual in the wording and context. It was, "just what would it take for you to turn state's evidence?" It was put in manner, tone, and in the sense of "what provocation by others would set it in motion." It was not put in the sense that "I think you ought to do it," but rather as though he were feeling me out, trying to get a reading for someone else of my state of mind, how close I was to telling the story. I told him that I was going to follow my own course of action, that I would not take immunity from the govern-

ment because my testimony would seal the fate of the others who had been indicted with me, but that when the time was right I would take my own course of action. He fell silent at that statement.

A week later we were to meet again when he again came into town and was at Bittman's office. He requested that I join him at Bittman's office and on arrival I found Liddy and Hunt there with Bittman. While the meeting was friendly, I received the distinct impression that Bittman and Alch were trying to get a feel of the lay of the land, "taking our pulse" as Dean was to call it, seeing who was ready to talk, who was not, etc. While there, we discussed and signed some affidavits pertaining to electronic and physical surveillance. Liddy, Hunt and I had detected both electronic and physical surveillance and our motions were designed to determine whether the government was involved.

CHAPTER 26

The December 1972 Telegrams to William Bittman and Bernard Barker

On December 4, 1972, Judge Sirica stated in open court that the jury in January, 1973, would want to know "who hired the men for the Watergate Operation, and why."

On December 6, 1972, the *Washington Star* carried an article of an interview with the prosecutors, answering Judge Sirica's query, stating that "Reliable (prosecution) sources state that McCord recruited the four Cubans and that they believed that they were working for the President on an extremely sensitive mission." This was, of course, untrue.

This appeared to me to be laying the groundwork for a false claim at the trial that I was the "ringleader of the Watergate Plot." This would draw attention away from Hunt and Liddy, and in turn, from the White House, since both of them had formerly worked at the White House.

That same evening, December 6, 1972, I sent telegrams to William O. Bittman, attorney for Hunt, and to Bernard Barker's residence in Miami, Florida, stating that the *Star* story was untrue as they both knew. I asked for comments by return mail from Barker. I also wrote Hunt a letter on the matter stating that, as he also knew, the story was untrue, and he could either correct it or I would do so. Copies of the telegrams are presumably still on file at the Western Union Company.

This article was another of the many examples of the government prosecutors violating, with impugnity, Judge Sirica's early October 1972 order forbidding

public comment on the Watergate case. It turned out that this order was really only binding upon the defendants. The prosecutors time after time violated it.

In the telegrams and letter to Hunt in early December, 1972, I was trying to head off an effort falsely to lay the recruitment of the Cubans off on the writer, which would, in turn, shift the focus of the trial off of those formerly connected with the White House, namely, Liddy and Hunt. Apparently this effort was successful. The prosecutors dropped that ploy, after the telegram went to Bittman, and after I discussed the matter with F. Lee Bailey's law firm.

CHAPTER 27

My December 1972 Letter to John Caulfield

I wrote a letter to John Caulfield during the week of December 25, 1972. Angered because of what appeared to me to be a ruthless attempt by the White House to put the blame for the Watergate operation on CIA, where it did not belong, I sought to head it off by sending a letter to Caulfield. The letter was couched in strong language because it seemed to me at the time that this was the only language that the White House understood. The letter read as follows:

> "Dear Jack: I am sorry to have to write you this letter. If Helms goes and the Watergate Operation is laid at CIA's feet where it does not belong, every tree in the forest will fall. It will be a scorched desert. The whole matter is at the precipice right now. Pass the message that if they want it to blow, they are on exactly the right course. I'm sorry that you will get hurt in the fallout."

The letter was unsigned. I knew that Caulfield would know its source.

I was later to learn during Senate testimony that Caulfield had given the letter to John Dean, and he in turn had turned it over to John Mitchell via Paul O'Brien, CRP attorney. Mitchell and Paul O'Brien were obviously working closely together, even though Mitchell was no longer Director of CRP, and was in New York City, while O'Brien was in Washington.

Mitchell and CRP thus appear to be receiving any information coming to the White House officially, or privately, which they wanted during the Watergate cover up, from June 17, 1972 to March 23, 1973.

CHAPTER 28

Blackmail as the Motive of the Watergate Defendants — the December Gambit

ACLU Washington attorney, Charles Morgan, testified in Judge Sirica's court in early January, 1973, that prosecutor Earl Silbert told him on December 21, 1972, at a luncheon meeting that the motive of the Watergate defendants was "blackmail," that is, that the wiretapping was undertaken as a private enterprise by Liddy and Hunt in order to obtain scandal-type information against employees or officials of the Democratic National Committee and to blackmail then with it. Silbert said that he would produce evidence of it during the trial.

Silbert repeated this claim when he appeared before U.S. Circuit Court of Appeals Chief Judge David Bazelon, in January 1973, and he was questioned rather closely on this charge by Judge Bazelon, Judge McKinnon, and Judge Skelly Wright, sitting on the panel. Silbert continued to insist to them that blackmail was the major and primary motive for the break-in at DNC.

Morgan called Silbert's hand on this several times and told Silbert there was no evidence whatever that blackmail was involved and that Silbert's use of it was a diversion and a device to get the attention off of the White House and CRP.

It turned out that Silbert neither found nor produced a single scrap of evidence that blackmail was the motive for the operation. Morgan was right.

Silbert finally had to switch tactics during trial and claim that the operation was "a private operation of Liddy's" and that the motives of the defendants was financial hardship. Both such claims were also false. Yet the convictions have been allowed to stand based on Silbert's claim in his closing arguments that this was the motivation and intent of the defendants. These claims were totally and completely false, as Senate testimony has vividly proved.

Some may call all this ineptness on the part of prosecutor Earl Silbert. I don't think so.

CHAPTER 29

The Bittenbender Interview

On December 21, 1972, my attorney, Gerald Alch, "pitched" me to use a defense at the trial that the Watergate operation was a CIA operation, and he told me of a government interview with an unnamed police officer, stating

that I had told this Washington Metropolitan Police officer on the day of our arrest, June 17, 1972, that the Watergate operation was a CIA operation. I told Alch that this was, of course, absolutely false and that no such claim had ever been made at any time by me.

Five days later, on December 26, 1972, while in Alch's office, he again pressed me to use a CIA defense, which I refused. Alch pointed to a piece of paper, which appeared to be a memorandum of a U.S. Attorney's interview, and said that the memorandum was of an interview with Gary Bittenbender, a Metropolitan police officer, who in fact I had seen at the court the day of our arrest, but to whom I had made no allegation that the Watergate operation was a CIA operation.

During the Senate Watergate hearings, the Metropolitan Police Department reported to the news media that notes of Bittenbender's taken on June 17, 1972, reflected no statement or claim from me that the operation was a CIA operation.

Thus, who was falsifying information — the prosecutors or Alch? If it was the prosecutors, had they twisted and distorted an interview with Bittenbender in order to bolster a White House cover story, and the defense attorneys' gambit, that the Watergate operation was a CIA operation? If so, then this is evidence of collusion between prosecutors, CRP, and the defense in the Watergate operation.

CHAPTER 30

Al Baldwin's Interview, and "CIA"

Early in January 1973, Charles Morgan, ACLU attorney, picked up another gambit of the prosecutors which looked very fishy to him. He, in fact, referred to it in his 100-page brief on the abuse of the trial process by the prosecutors, filed with Judge Sirica in June, 1973.

The gambit was a transcription, made by the prosecutors, of a taped interview with Alfred Baldwin by *The Los Angeles Times* investigative team in the fall of 1972.

Seymour Glanzer, assistant prosecutor, represented to the court several things in regard to the transcript, which contained several references to "CIA." Glanzer told the court,

> "except for some so far unimportant details, the transcription is substantially correct." (Tr. 1024)

CHAPTER 32

Introducing the Wiretapped Conversation

Through a series of maneuvers, the prosecutors tried during the January 1973 Watergate trial to introduce the exact conversations intercepted from the DNC wiretapping, even though they knew it was illegal to do so.

ACLU attorney, Charles Morgan, representing the privacy interests of the Democratic National Committee personnel whose telephones were tapped, objected at every turn. And rightly so. It is unlawful to introduce such conversations in evidence or make them public; it is in fact, a separate violation of the federal law to do so. Yet the prosecutors tried by every means possible to do so, even after the U.S. Circuit Court of Appeals had ruled in January 1973 that such conversations were not necessary to prove the case of illegal interception.

Prosecutor Seymour Glanzer, very shortly after the Circuit Court had so ruled, questioned Alfred Baldwin on the stand and immediately began to ask him to reveal the contents of the conversations overheard. Morgan again objected. Glanzer persisted. Again Morgan objected.

Why was Glanzer so persistent in trying to get the wiretapped conversations out into the public, even though he, himself, was violating a federal law in so doing? Was he following "the Nixon game plan," doing as Nixon had told H. R. Haldeman to do on June 20, 1972 — "create a diversion?" I believe so. What other reason was there for such questioning? The Circuit Court had just ruled the day before his questioning that the nature of the conversations were not necessary to prove unlawful interception of the Democratic National Committee calls.

CHAPTER 33

The First Watergate Trial and Caulfield and Ulasewicz

The first Watergate trial of the original seven defendants began on January 8, 1973, and was concluded on January 29, 1973.

Earlier, in December 1972, I had been pitched twice by my own attorney, Gerald Alch, once in an all day session, to use a false defense that the Watergate operation was a CIA operation, which I refused to do. My statement on that is contained in the December 21 and 26, 1972 section of Part II of this book.

In the three weeks of the trial some other fantastic things were to occur. The night before the trial began, Bernard Barker, team chief of the Watergate operation was to tell me that he and the other Miami men had been pitched a couple of weeks before to use a false defense at the trial, to claim that the Watergate operation was a CIA operation, which of course it was not. My violent objection to it had headed off this trial tactic. Then Barker went ahead to tell me that intense pressure was being put on the men from Miami by E. Howard Hunt to plead guilty, and that such pressure was accompanied by promises of Executive clemency after about 11 months, payments while in prison and jobs when the men were out of prison. All of this constituted bribery for the purpose of influencing testimony — to keep them quiet. During the first week of the trial, in the corridors of the courtroom, Barker and the other Miami men were to tell me of continued high pressure by Hunt and unnamed others to get them to plead guilty, which they finally succumbed to.

Henry Rothblatt, one of the attorneys for the Miami men, had called the first Watergate trial "fantasialand," he'd never seen nor heard anything like it. He was to testify subsequently of the pressure on the Miami men from outside persons to get them to plead guilty. Alch, my attorney, told me during trial that the prosecutors had even called Rothblatt in and threatened him with bar association action for refusing to plead his clients guilty!

From the first day of the trial, I also was getting the high pressure from White House agents themselves, aided and abetted by my own attorney Gerald Alch. I have detailed that testimony of that pressure in this book, in the December 1972-January 1973 portion of Part II. Alch was taking my pulse by day, and the White House agents Caulfield and Ulasewicz by night, with telephone calls apparently trying to wear me down, and by personal visits by Caulfield.

Such pressure to influence the testimony of a defendant is, of course, a violation of the Federal tampering statute and is, in addition, bribery and obstruction of justice. Yet the Federal prosecutors apparently want to retain a conviction so badly that they have not indicted Ulasewicz, who admitted under oath obstructing justice, or Caulfield or Alch.

The prosecutors have insisted that I received a fair trial. If such be the case, then these elements can be considered receiving a fair trial in Federal courts today — — all of these things happened during the trial:

1. Unlawfully influencing the testimony of a witness, a federal crime.

2. Bribery attempts against a witness to a federal trial, also a federal offense.

3. Perjury by the two key witnesses, Jeb Magruder and Bart Porter, on whose testimony prosecutors Earl Silbert and Seymour Glanzer constructed

their opening and closing statements that Liddy planned and funded, through misappropriated funds, the Watergate operation, and that he was the "big boss" of the whole operation, neither of which was true.

4. Magruder suborned perjury of a third key witness, a fact known to the prosecutors, yet which they concealed from the judge and jury after the defense attorneys, including my own, failed to cross examine Magruder or Sloan about.

5. My defense attorney, Alch, cross examined none of the key witnesses — Magruder, Porter, Sloan, or White House aides who testified.

6. My defense attorney did not object to entry into evidence of equipment introduced by the prosecutors, from Dean's office, and of my own, even though the chain of evidence had not been established for the equipment in Dean's possession for over a week, coming out of the Watergate operation, nor mine obtained through trickery. I protested to my attorney but he said the equipment would not be harmful as evidence.

7. My defense attorney was told by me before and after Magruder's testimony that he was a co-conspirator, and was going to and did perjure himself, yet my attorney asked Magruder no questions at all.

8. The President's two top aides, Haldeman and Ehrlichman, both had knowledge, Haldeman in February 1972 and Ehrlichman in June 1972, of the planning meetings in the Attorney General's offices in January and February 1972 attended by Mitchell, Magruder, Dean and Liddy, planning burglary of the Democrats. Both have admitted under oath such knowledge. Yet neither Haldeman nor Ehrlichman came forth to the judge and jury with that information. They have a public duty, under their oath of office and under the misprision of felony statute, to do so.

9. President Nixon has admitted that on March 21, 1973 John Dean told him of corrupt influencing of the defendants under trial to keep them quiet, including payments of money, or bribery, for that purpose. Though the trial was still in process on March 21, 1973, Nixon concealed that information and let Liddy be sentenced on March 30, 1973 and the remaining defendants be sentenced in November 1973, without coming to the judge with the criminal knowledge which he had and which would have affected the outcome of the sentencing. Presumably the judge would have thrown the case out of court, as Los Angeles Judge William Byrne did in May 1973 when he learned that the government had committed illegal acts against the person of Daniel Ellsberg.

10. L. Patrick Gray III, burned in December 1972 files of Hunt's taken from Hunt's White House office, yet Gray testified that he did not read the files and has no idea what they contained one way or another relevant to the Watergate case.

trial to avoid other newsmen becoming suspicious that Jackson, who sat in the pressbox near the defendants table, had facts they did not. Jackson received the other details of the Watergate story in early March 1973, in my home after I was released on bail. On March 25, 1973, he broke the story over *The Los Angeles Times* nationwide news syndicate network, the first newsman with the facts of John Mitchell, Jeb Magruder and John Dean's role in the Watergate operation. No other journalist had these facts before that time. *The Washington Post* reporters, Woodward and Bernstein, did not, because I had never talked with them except for one brief two minute telephone call on a minor aspect of Watergate; their sources, Hugh Sloan of CRP, and their sources within the FBI and the prosecutors office, did not have the facts on Mitchell, Dean and Magruder. Bob Jackson scooped them, and others, on the true Watergate story.

CHAPTER 34

Collusion between Defense and Prosecution?

Late in the January 1973, Watergate trial, my attorney, Gerald Alch, was to ask me two rather unusual questions on the way to court one morning in a taxi.

Alch wanted to know where I had bought the only illegal devices used in the DNC monitoring operation, the two telephone bugging devices. There was no apparent reason for the question and he offered no explanation, and I deliberately avoided answering the question because things did not ring right in the questioning. He persisted further in his question. I refused to answer it.

He then asked a second question, to whom was the envelope addressed, delivered by Alfred Baldwin to CRP in June 1972, which contained a wiretap log? This was the only delivery Baldwin had made of the logs to CRP and it had caused a great deal of confusion out, and in, court because of Baldwin's hazy recollection of the name of the person it was addressed to. The prosecutors did not know to whom it had been addressed, and Baldwin couldn't recall. Only I knew. No one else did.

The answer was a very innocent one. It was addressed to Gordon Liddy, but it had been delivered to a duty guard who often was given mail after hours to hold and give to CRP the next day. He received the sealed envelope from Baldwin, but had no idea, whatever, what it contained. He simply put it with the other mail for CRP. This I told Alch during the taxi ride, I saw no reason to do otherwise.

Some days later, Earl Silbert was to publicly state about the Baldwin letter delivery to CRP exactly what I had told Alch that morning. The press picked it up and very suspiciously commented on it, stating that only I knew those facts, and asking how Silbert learned of them. The answer is that only Alch or his local representative, Bernard Shankman, could have told the prosecutors, privately, what had happened. I did not. I had told Alch the information for his ears only. Shankman was in the taxi with us. An attorney-client relationship existed between us. An attorney is precluded by legal ethics from disclosing to the prosecution any such conversations.

Would Alch also have disclosed to the prosecutors where I had purchased the only illegal telephone devices which he also asked me about the morning of the taxi ride? And would the prosecutors have immediately gone to the seller and brought him in to present his evidence against me in order to bolster their case? I have not the slightest doubt they would have done so and that this was the purpose of Alch's questioning me on the devices — in order to be able to give the prosecutors evidence they could use against me.

This is not too unusual. I was to hear of many such cases from prisoners while at the D.C. Jail, where they had given their defense attorneys critical information, in complete privacy, and were then to go into court one morning to find witnesses on the stand presenting evidence against them — evidence only they knew about, and had told their attorneys about, who in turn had passed the information along to the prosecutors. Sometimes lawyers do this as a trade-off, "I'll help you in this case, if you will help me in another case I have, or may have, in the future."

This needs little comment. It speaks for itself.

CHAPTER 35

February and March, 1973: "Vacation Time"

During this period, February and early March 1973, my lawyer, Gerald Alch, came by the D.C. jail only twice, and I heard from him by telephone once. He had taken off on vacation to the Caribbean immediately after the trial. The White House staff, at the same time, took off for a vacation at La Costa, California. I "vacationed" at D.C. Jail. It was a time for summarizing my course of action. I knew that the case could not be fought from behind bars, and that I needed to be out where the legal case could be built and researched. The temptation to take Caulfield up on the offer of White House bail money was of course present — he said, "we can put up the whole amount, $100,000 straight cash." Alch had said that he could, and would, serve as an intermediary on the $100,000. I told him, however, that whereas

March 23rd, the Judge say that on the afternoon of March 20th, after receiving my sealed envelope, he had called U.S. Attorney Harold Titus and Earl Silbert to his office to witness the opening of the letter. They declined to be present. I have always assumed that they immediately advised U.S. Attorney General Richard Kleindienst, Assistant Attorney General Henry Petersen, and the White House of the fact that a sealed letter of mine had been delivered to the Judge. I have also been intrigued by the fact that U.S. Attorney Harold Titus was known to date Rose Mary Woods, the President's secretary and administrative assistant. I have always wondered whether he called her and told her of the letter.

I returned home to await developments. Since I fully expected the sentencing to occur irrespective of anything, I began getting my personal affairs in order. The remaining days with my family were as precious as diamonds. We have always been close, and the knowledge that "the propitious time" had arrived, the proper action taken, and that at any moment our time together could be interrupted, made every moment one to be valued beyond measure. My wife has always been a gem, and our children have been the greatest delights any family could have. They are each unique in their own very special ways, and we are tremendously proud of them. We have been truly blessed.

Our families called and I indicated to them, without details, that the story had begun to be told. They reflected some natural concern for my safety, as they had for some months. The bomb threat of late June, 1972, had worn heavily on them and they could visualize a reoccurrence of that or a related type of violence. Much was at stake. An entire Administration could be affected by my knowledge, ranging from my attorneys Alch and Bailey to the hierarchy of the White House. I believed that Nixon and his men and others would do almost anything to keep my story from coming out. We never doubted that violence was a possibility. But there was no deterring a course of action that I had decided upon long ago. I believed that the whole future of the nation was at stake. If the Administration could get away with this massive crime of Watergate and its cover up, it would certainly stop at nothing thereafter. The precedent such would set for the nation would be beyond belief, beyond recovery, and a disaster beyond any possible reversal, if it were able to succeed in the cover up.

CHAPTER 37

March 23, 1973: "Like A Giant Balloon . . ."

March 23rd, to put it mildly, was a most unusual day.

I walked into the courtroom at 10:00 a.m. that morning, not knowing what to expect. I had written in my letter to Judge Sirica that, after sentencing, I desired to talk with him in chambers. I also said that I could not trust

the prosecutors, nor did I want to give the information to the FBI. L. Patrick Gray was then giving testimony to a Senate Committee in his confirmation hearings and it was obvious to me he was not being truthful. I was afraid the prosecutors would suppress the information I had (as I later learned they had suppressed the information about the subornation of perjury of Hugh Sloan, keeping it from the judge and jury). I desired to talk with the judge about three matters. One was the concern that I had for the men who, after sentence, would be under the control of Attorney General Richard Kleindienst and the Department of Justice. A second was, what was proper for me to do, insofar as my constitutional rights were concerned, in talking to the Senate Watergate Committee — the judge answered that question in court that morning. A third was what to do about my lawyer Alch.

The court hearing began rather blandly. A few procedural matters were discussed. Then Judge Sirica said, in a rather casual way, that he had another "preliminary matter" he wanted to get out of the way. He then, with a poker face, read my letter to the courtroom. As he read it, I watched the defense attorneys and the prosecutors very carefully. The air was electricified — it was almost as though no one was breathing for fear of missing a comma or a phrase. But within the courtroom, and among the prosecutors and defense attorneys, it was as though someone had let the air out of a giant balloon — one could almost hear the air going out of it. The lawyers for both sides were almost without words. Alch glibly commented to the court that I wanted to talk to the Judge after the session. The Judge pulled another surprise — he deferred the sentencing for some weeks pending cooperation of the defendants with the Senate Watergate Committee and the Federal Grand Jury. This answered one of my questions I had wanted to pose to the judge, but I was not excited about talking to the Grand Jury because I knew Kleindienst would try to discredit my testimony — as he did try to do a few days later when he told Ehrlichman that my testimony was "only hearsay" and not to be given much credence. This he said without even having heard my testimony. This was an indication of the objectivity of the Attorney General of the United States.

While all this was going on, my wife was sitting in the back of the courtroom with a copy of my letter to Judge Sirica. I fully expected to go off to prison that day and she had orders to give the letter to Bob Jackson of *The Los Angeles Times* who broke the story about Mitchell, Magruder and Dean's involvement in Watergate. Since the Judge read the statement to the press, and gave them copies, it was not necessary to give Bob the copy and we have retained it as a souvenir of one of the many eventful days in our lives.

Alch made it clear that day that he knew my letter was coming. What was in it, he didn't know. But I received a distinct impression in our discussions that day that Silbert had called him, and Alch had told Silbert what he thought I might know about Watergate and what possibly was in the letter. I had, after all, told Alch before, during and after Magruder's testimony, that Magruder was going to, and did, commit perjury. Alch had deliberately

avoided cross-examining Magruder — he didn't want to rock the boat and implicate Mitchell.

After the court session, Silbert and Alch took me to the anteroom of Judge Sirica's chambers while they went in to see him about setting a date the following week for my private session with him — of course they both wanted to be present. The Judge set a date of the following Thursday, which was later cancelled, in light of subsequent developments.

After court that day, I told Bernard Fensterwald, who was in the courtroom, that I wanted to talk with him after lunch. Then, facing the press outside the courtroom, I answered a few of their questions, including the one about whether I was afraid of retaliation by Nixon against me, my family and my friends. I told them that of course I expected retaliation, but not physical harm to occur. I knew the man. I refused a police offer of transportation from the court. The last thing I wanted to show Richard Nixon and his minions was that I had any fear of them, which I didn't. I knew what to expect from them in retaliation but I was never to be afraid of his crew.

I will always remember the luncheon that day with my wife and daughter. It was at a very pleasant small restaurant near Georgetown University. The students were swarming all over the place, and none recognized us. The food was excellent and the occasion for my family was a notable one — the propitious day we had been talking about for months had arrived!

After lunch, I went to Fensterwald's law office on 16th Street directly across from the White House. We could actually see Nixon's living quarters from his office. Even though I had talked with Chief Counsel Sam Dash of the Senate Watergate Committee by telephone earlier that week on another matter, I asked Fensterwald to call him and see if we could meet that afternoon. Dash came over within the hour. Thus began the first of a long series of meetings with the Senate Watergate Committee. The Committee was only a month old, and the staff had no offices at the time. They were soon to get adequate space. I told Dash of my desire to cooperate with him and to give him my full knowledge on the Watergate operation and its aftermath, but I wanted to be very accurate about the information provided and preferred to put it in writing, where the information was crucial, so that the context and wording would be exact. He agreed to this arrangement, and we were to meet the following day for the first information I provided regarding Jeb Magruder's perjury at the January trial. After an hour we adjourned.

Thus ended a most eventful day for my family and me, and one I shall never regret.

a cover or pretext for the White House. Senator Weicker's I respected — he wanted to lay the blame exactly where it belonged, with Richard Nixon — not with the Republican Congressmen and Senators — and to try to get Nixon to face up to it. He had a long battle ahead, but he had the integrity to stay with it.

The Democratic Senators' questions were sharp, all of them. Senator Sam Ervin's, from a broad and overall standpoint, were designed to develop the full story. Senator Talmadge's questioning was razor sharp, as was Senator Inouye's. It's true, there was "no way" but to answer truthfully and precisely their questions. Senator Montoya, as well, had the questions that were to the point and developed more of the story.

On the second day of my testimony, Senator Gurney took on my story about the mysterious telephone caller (Ulasewicz), trying to discredit it and the charges I was making against the President. That I understood and bore no resentment for. But no one was to seriously challenge the testimony given and I have been advised that none of my charges have been proven false; put another way, that it was all true as far as the Committee has been able to verify. My lawyer, Gerald Alch, followed me and committed perjury in certain statements he made counter to my own. Since then, I have set forth to the Massachusetts Bar Association, many of the points of illegal and improper representation by Alch and have offered to testify under oath to them. They seem to have a reluctance to hear my testimony. Are they covering for one of their own? Time will tell. In the meantime, a civil suit will proceed against Alch and Bailey in order to lay out all of the points of perjury, conflict of interest, and improper representation in the January 1973 trial, and acts of Alch's and Bailey's, as agents of the White House, to keep me silent.

The leads from my Senate testimony have since been corroborated — that John Mitchell was involved in the planning and authorization of the Watergate operation; that Magruder committed perjury at the first Watergate trial in testimony highly material to the trial; that crucial testimony was withheld at the January 1973 trial, which would have identified higher-ups involved in the case; that there were plans by Liddy and Hunt to burglarize Hank Greenspun's offices at *The Las Vegas Sun;* that Hunt had been dealing with Howard Hughes representatives in connection with the burglary and other matters; that Colson may have been knowledgeable of the Watergate operation; that Sally Harmony, Liddy's secretary, typed the wiretap logs and reports; that Executive clemency had been discussed with me as a bribery and tampering move by White House agents Caulfield and Ulasewicz; and on and on. I offered to come back to refute Alch's testimony, and some of Caulfield's which was not truthful. Time did not permit it. I have since documented much of what I had to say in this regard, in sworn affidavits before the Watergate trial judge, however.

The news media seemed to have enough to keep them busy during the period of this early testimony, and I must say they were very considerate of me

William O. Bittman to the CRP lawyers and read to them, threatening "to blow the White House out of the water," according to statements made to me by Mrs. Hunt. Did Colson and the President discuss Hunt in Rebozo's presence?

On December 21, 1972, Dean talked with prosecutors Earl Silbert and Henry Petersen. Dean told Petersen that two envelopes of materials out of Hunt's safe had gone to L. Patrick Gray, secretly. Dean told Petersen that if he were called to testify he would have to reveal that fact (p. 7484-85). Petersen saw to it that Dean was not called to testify. Dean added that the prosecutors had not pursued a request by Hunt's lawyer, Bittman, for exculpatory evidence seized out of Hunt's safe.

In late December 1972, Hunt wrote Colson a letter indicating that he believed he had been abandoned and urged Colson to meet with Hunt's lawyer, Bittman. Hunt testified that through Bittman he learned that Colson would be meeting with Bittman on January 3 or 4, 1973. Among the matters to be discussed, Hunt testified, were the materials seized from Hunt's safe at the White House (Book 9, p. 3697).

Dean received a call, he testified, from CRP lawyer Paul O'Brien on January 2, 1972, stating that "Hunt was off the reservation." Later on January 2, he again talked to O'Brien who said that Hunt wanted to plead guilty but he wanted assurances of Executive clemency first (Book 3, p. 970). O'Brien told Dean the matter had to be resolved promptly and that Hunt would only take an assurance about clemency from Colson.

On January 3, 1973, Dean, Ehrlichman, and Colson met and Ehrlichman said he would talk with the President about Executive clemency for Hunt, Dean testified. On January 4, Dean learned that Ehrlichman had talked with the President and had received an assurance of Executive clemency for Hunt. Later Dean learned that Colson had also talked with the President about the same assurance for Hunt, and Dean said that the President confirmed in two meetings with Dean, that he had discussed with Colson Executive clemency for Hunt. The two dates were March 13 and April 15, 1973. (The date March 13 may have been in error. The date involved may have been March 21, 1973).

On January 8, 1973, my lawyer, Gerald Alch, took me and Bernard Barker to the office of Bittman, Hunt's lawyer. Barker was allegedly going there to receive an assurance of Executive clemency. Alch, in Bittman's office, told me I would hear from a former White House aide about Executive clemency. I did, and refused it.

* * *

In Part I, some of the highlights of my role, and of certain others, in the Watergate case have been reviewed. While these were occurring, there were many other interlocking activities going on in CRP and the White House. Part II contains extracts of sworn Senate testimony, reflecting many of those interrelationships of persons and events, set forth in chronological order from June 30, 1971 to early 1974.

Mr. Ehrlichman: ". . . there must have been some Watergate discussion." (But Ehrlichman could recall no details.)

MAGRUDER: ". . . (the concern at this time regarding the Watergate money was) the money was raised after April 7 (1972) and was not reported, in direct violation of the new campaign law, and could be traced back to the Committee." (p 1994)

LA RUE: Liddy told La Rue and Mardian that "certain commitments had been made to him, and subsequently passed by him to the other people involved . . . regarding the maintenance or expenses for their families, legal expenses." (p. 4596)

DEAN: The contents of Hunt's safe were brought by GSA in several cartons to Dean's office. The contents had been stored overnight in Kehrli's office.

In going through the contents later in the day with Fielding, Dean saw electronic equipment in a briefcase; documents on the plumbers unit operation directed to Charles Colson, critical of Krogh's handling of the unit; a number of materials relating to Daniel Ellsberg such as news clippings and a psychological study of Ellsberg which had been prepared, materials relating to an investigation conducted for Colson at Chappaquidick, some materials relating to the Pentagon Papers and a paperback book containing the published Pentagon Papers. There were also some classified State Department cables.

Dean requested Fielding to sort out the politically sensitive documents from the others, which he did. Dean called David Young who picked up the State Department cables and took them to his office. The large briefcase was stored in Dean's locked closet in his office suite and the politically sensitive documents and Hunt's personal papers were placed in a safe in Dean's office. The remaining materials were left in the cartons on the floor in his office.

Dean told Ehrlichman about the electronic equipment and the materials about Ellsberg and other materials. Ehrlichman told Dean to shred the documents and to "deep-six" the briefcase.

Dean told Fielding what Ehrlichman had requested of him about "deep sixing" the materials. Fielding agreed that it would be destroying evidence. Dean took the electronic equipment out of his office. He stored it in the trunk of his car where it remained until Dean returned it to the office after he had decided what else to do with the equipment. (p. 2182-84)

[The electronic equipment was entered into evidence during trial without Dean ever appearing. No chain of evidence was ever established on the equipment and documents. I complained about this to my attorney, Alch, who said "not to worry about it, it's not important." Alch not only failed to object – he thus agreed to its entry into evidence. Fielding testified at the trial but did not disclose that Dean told him Ehrlichman requested Dean to destroy evidence.]

December 1972

A "CIA Defense"

MAGRUDER: "... in these series of meetings we had (from June 17th) ... to September (1972) that defense (a CIA defense) was discussed in general terms ... (with John Mitchell and others)." (p. 1927)

December 21 and 26, 1972

McCORD: On May 4, 1973, McCord furnished to Federal Prosecutor Earl Silbert for the Federal Grand Jury, and to the Senate Watergate Committee the following sworn statement:

SUBJECT: PRESSURE ON THE DEFENDANTS TO BLAME THE WATERGATE OPERATION ON CIA: AND OTHER MATTERS

... In two separate meetings in December 1972, it was suggested that I use as my defense during the trial the false story that the operation was a CIA operation. I refused to do so.

I was subsequently informed by Bernard Barker just before the trial began in January 1973, that E. Howard Hunt and other unnamed persons in Miami had brought intense pressure to bear against the Cuban-Americans who were defendants, to use the same story as their defense, that my stand taken against it had been the decisive factor causing this ploy to be dropped, and that Hunt was very bitter about it. Hunt's bitterness was later revealed early in the trial when the Cubans advised that Hunt had said that I was responsible for our being in the plight we were in for not going along with the CIA thing.

At a later time, I heard from Barker that he had been told that Cuban money was suspected of being funnelled into the McGovern Campaign. I have no knowledge that this suspicion was ever verified.

The two December 1972 meetings with me were on December 21, 1972, and on December 26, 1972. Present at the first meeting with me at the Monocle Restaurant in Washington, D.C., were Gerald Alch and Bernard Shankman, my attorneys. Present at the second meeting was Gerald Alch, and the meeting was at his offices in Boston, Massachusetts.

In the first meeting, Alch stated that he had just come from a meeting with William O. Bittman, attorney for E. Howard Hunt, and I received the impression in the discussion that followed that Alch was conveying an idea or request from Bittman. There followed a suggestion from Alch that I use as my defense during the trial the story that the Watergate operation was a CIA operation. I heard him out on the suggestion which included questions as to whether I could ostensibly have been recalled from retirement from

CIA to participate in the operation. He said that if so, my personnel records at CIA could be doctored to reflect such a recall. He stated that Schlesinger, the new Director of CIA, whose appointment had just been announced, "could be subpoenaed and would go along with it."

. . . Alch went on to mention testimony, or a statement, made to federal authorities by Gary Bittenbender, a Metropolitan Police Department undercover police officer, whom I had seen at the Courthouse on June 17, 1972, when the five of us who were arrested were arraigned, in which Bittenbender purportedly claimed that I had told him that day that the Watergate operation was a CIA operation. I advised Alch that if Bittenbender had made such a statement under oath that he had perjured himself, and that I had not made such a claim. Bittenbender can be interviewed to determine the circumstances under which he had made such a statement, and whether his statement was in fact an honest error of impressions based on events which occurred in Court on that day, which could have misled him. The (statement) was that some of us were identified in the hearing in Court as formerly connected with CIA. Alch went on to mention the name of Victor Marchetti whom he was considering calling to describe CIA training in which its employees were trained to deny CIA sponsorship of an operation if anything went wrong and its participants were arrested. He also requested that I meet with him in Boston on December 26, 1972, which I did. There he opened the discussion by showing me a written statement of an interview with Bittenbender in which Bittenbender claimed that on June 17, 1972, I had told him that the Watergate operation was a CIA operation. I repeated to Alch my earlier statement, that Bittenbender had either perjured himself, or had made a false statement to federal authorities. I told Alch that I would not use as my defense the story that the operation was a CIA operation because it was not true. In addition, I told him that even if it meant my freedom, I would not turn on the organization that had employed me for 19 years, and wrongly deal such a damaging blow that it would take years for it to recover from it, and finally that I believed the organization to be one of the finest organizations of any kind in the world and would not let anyone wrongly lay the operation at the feet of the CIA.

. . . On Friday, December 29, 1972, I visited Bernard Shankman's office in Washington, D.C., and let him read a statement which I had prepared, which I proposed to read to the press on December 30, 1972, releasing Alch as my attorney. I believed that although Shankman had been present at the first meeting he was not a party to the events previously described. Shankman suggested that I give Alch an opportunity to meet with me and explain why he had undertaken the course which he had, and such a meeting was set up for Tuesday, January 2, 1973, in Washington. Alch failed to appear, and I delivered a letter to Judge Sirica, releasing Alch as my attorney. Alch immediately called, asked to meet with me on January 3, 1973, and asked to continue as my attorney. We met and Alch stated that he, in conveying the request made of me on December 21 and December 26, 1972, was acting out of what he felt to be was my own best interests. By this time, I was

things that Bittman was to discuss was the motion regarding the evidence seized from Hunt's safe at the White House by John Dean. (Book 9, p. 3697)

January 1, 1973 (Monday)

[The events of the week preceeding the first Watergate trial, which began January 8, 1973, were highly significant because of the White House and CRP efforts to get all the defendants to keep silent, preferably by pleading guilty.]

January 3, 1973 (Wednesday)

PETERSEN: Chief Counsel Dash asked Petersen, during the Senate hearings, if he recalled receiving some xerox copies of photographs from CIA on January 3, 1972, and other material on October 24, 1972. Dash showed Petersen a copy of a memorandum dated December 5, 1972, and attached to it were xerox copies of photographs. Petersen recognized some of the photos including pictures of Liddy and one photo containing a marking "reserved Dr. Fielding" and another "reserved Dr. Rothberg." Petersen said he and Silbert couldn't make anything out of the photos, and asked CIA if "they didn't have any descriptive data or negatives or actual photographs or anything that would assist us." Petersen said he did not know who Fielding was, and had no knowledge of the Ellsberg case. Petersen said that they didn't relate the documents to the Ellsberg case until the time of "Mr. Krogh's affidavit in connection with the Ellsberg matter." (p. 7479-83) *[CIA actually gave Petersen a memorandum on January 3, 1973 identifing the license plate on a photo as Dr. Fieldings. Petersen did nothing with this information.]*

EHRLICHMAN: There was a meeting at noon between John Ehrlichman, John Dean and Charles Colson regarding Hunt.

At 7:00 p.m., Ehrlichman met with Colson and Dean regarding a letter Colson had received from Howard Hunt. Colson proposed that Dean get together with Hunt, or Hunt's attorney. But it was agreed, instead, that Colson would talk with William O. Bittman, Hunt's attorney, and Bittman would convey to Hunt, Colson's assurances of "personal support."

Ehrlichman told Dean and Colson of a previous discussion with President Nixon in July, 1972, regarding the topic of Executive clemency in which President Nixon told Ehrlichman that no one from the White House was to get into the area of Executive clemency with anyone involved in the case, and "surely not to make any assurances to anyone." (p. 5419-21)

McCORD: This is the date Judge Sirica called a meeting on my having fired Alch (because he had tried to get me to use a false defense at the trial, i.e., the defense that "CIA was behind the Watergate operation." I had refused to do so.) We agreed to give it one further try with Alch as my defense attorney.

January 4, 1973 (Thursday)

DEAN: Liddy called Krogh's secretary about a letter from the Senate Commerce Committee regarding Liddy's relationship with Krogh. Dean and Krogh conferred and gave Liddy a response through the secretary, so that Krogh would not have to talk directly to him while Krogh's Department of Transportation appointment was pending before the Senate. (p. 2277-78)

EHRLICHMAN: He met with Nixon and Haldeman from 3:02 p.m. to 5:15 p.m. and Henry Kissinger was there for about 45 minutes. Ehrlichman states he cannot recall discussing Watergate or Executive clemency during this meeting.

Ehrlichman also met with Attorney General Kleindienst on this date. (p. 5422-24)

Early January 1973

DEAN: After Mrs. Hunt's death on December 8, 1972, Paul O'Brien said that Bittman thought the government might be of assistance in helping Hunt by finding a sympathetic psychiatrist to examine Hunt, and who would concur in a finding of the psychiatrist who already had examined Hunt and found him not fit to stand trial. At Mitchell's request, Dean called Henry Petersen to ask his help, and was told, "if there was anything which could be done, it would be, but he did not think that anything could be done in the matter." (p. 2266)

[Alch gave me similar information about Hunt, almost word-for-word, during the first week of the trial. Where he obtained his information, I do not know.]

January 5-6, 1973

DEAN: CRP attorney Paul O'Brien reported to Dean that Liddy was "miffed" because Krogh was unwilling to speak to him. At Krogh's request, Dean called Liddy at home. (p. 2279)

[Paul O'Brien had no legal counsel relationship to Liddy.]

After Senator Mansfield sent letters to Senator Eastland and Senator Ervin regarding the holding of Watergate hearings, "Wally Johnson and Fred LaRue informed me that they had talked with Senator Eastland. The White House wanted Senator Eastland to hold such hearings because they felt Senator Eastland would be more friendly and . . . the White House had more friends on the Judiciary Committee than on Senator Ervin's Government Operations Committee." (p. 2287)

from Ehrlichman that he had given Colson an affirmative regarding clemency for Hunt and that Colson had talked with Bittman again about the matter. There was another meeting on this subject on January 5, in Ehrlichman's office, in which Colson explained exactly what he had told Bittman regarding clemency. He said that he had told Bittman that he could not give a specific commitment but he gave him a general assurance. He also said that he told him that clemency generally came up around Christmas and that a year was a long time. It was as this meeting was ending that I said to Ehrlichman that this will obviously affect all of the others involved as the word will spread, and can I assume that the same commitment extends to all? He said that no one could be given a specific commitment but obviously, if Hunt was going to get an assurance for clemency the others could understand that it applied to all.

"After the meeting in Ehrlichman's office, Colson told me that although Ehrlichman had told him that he (Colson) should not discuss this matter with the President, that he, in fact, thought it was so important that he had taken it up with the President himself. I also learned shortly thereafter, as a result of a telephone call from O'Brien, that Bittman had informed O'Brien that Hunt was satisfied with Colson's assurances.

"As I shall state later, the President himself raised this subject on two occasions with me, and told me that he had discussed the matter of Executive clemency for Hunt with both Ehrlichman and Colson. The President raised this with me on March 13, 1973, and April 15, 1973.

"While I was in California during the late December/early January 1973, as I referred to a moment ago, I received a call from Mr. Fielding who told me that Jack Caulfield had received a letter from McCord. Fielding was not explicit regarding the contents of the letter, and said that he had taken down the letter and that I could read it when I returned in the next day or so to the office. I have submitted a copy of the letter transcribed by Fielding to the committee.

McCORD: LETTER TO JOHN CAULFIELD

"Dear Jack:

I am sorry to have to write you this letter. If Helms goes and the Watergate operation is laid at the feet of CIA where it does not belong, every tree in the forest will fall. It will be a scorched desert. The whole matter is at the precipice right now. Pass the message that if they want it to blow they are on exactly the right course. I am sorry you will get hurt in the fallout." (Book 1, p. 196)

DEAN: ". . . between January 3 and 5, Mr. Caulfield came to my office with the original letter. I do not know what I did with the original, but I believe I gave it to Paul O'Brien. I know that O'Brien and I discussed the matter, because he told me that McCord was not cooperating with his lawyer — Mr.

Alch. O'Brien also told me that Bittman had planned a CIA defense to the case, but McCord, who initially had been willing to go along, later refused.

"O'Brien subsequently talked with Mitchell about the matter, because Mitchell called me and informed me that he had discussed the matter with O'Brien, and Mitchell asked me to request that Jack Caulfield talk with McCord to find out what he was going to do. I told Mitchell I would ask Caulfield to speak with McCord. When I later tried to reach Caulfield he had gone to California for a drug conference. I later informed Mitchell that Caulfield was out of town." (Book 3, p. 973-74)

January 7, 1973 (Sunday)

[I saw Bernard Barker in Washington at the Sheraton-Carlton Hotel. He told me that Hunt was going to plead guilty. Barker stated that "this was alright for Hunt, because he had received an assurance from the White House that he would receive Executive clemency, and that Hunt had the clout to insure that he would get it." Barker felt that he personally needed more assurance than word, third-hand, through Hunt, that the four Miami defendants would also receive it.]

January 8-10, 1973

DEAN: "It was on January 10 that I received calls from both O'Brien and Mitchell indicating that since Hunt had been given assurance of clemency and that those assurances were being passed by Hunt to the others, that Caulfield should give the same assurances to McCord, who was becoming an increasing problem and again I was told that McCord's lawyer was having problems with him. Both O'Brien and Mitchell felt that McCord might be responsive to an assurance from Caulfield, because Hunt, Bittman, and his lawyer, Alch, had lost rapport with him. I told Mitchell I would do so.

"Based on the earlier conversation I had with Ehrlichman on January 5 that the clemency assurance that had been given to Hunt would also apply to the others, and Colson's description of how he had given Bittman a general assurance, without being specific as to the commitment, I called Caulfield later that day to request that he get in touch with McCord. Caulfield told me that it would be very difficult, because he was going to be in California for several more days. Caulfield indicated that it would be easier for Mr. Ulasewicz rather than himself to talk with McCord . . . I said fine, and then gave him the clemency message similar to the message that Colson had transmitted to Hunt via Bittman. Caulfield wrote down the gist of the message, he repeated his notes back, and I said that was fine . . . Caulfield said he would have the message delivered right away. (Book 3, p. 975)

January 8, 1973 (Monday)

[During the morning of January 8, 1973, my defense attorney, Gerald Alch, told me that the "prosecutors want a 'package deal' on pleas of guilty from

all the defendants, and they are not going to consider the pleas, unless all plead guilty." Alch went on to say, "Jim, I don't have any defense for you."

The impact of what Alch was saying was that I should "get in on the package deal," by pleading guilty, because he didn't have a defense.

In the afternoon, Alch took me to the offices of William O. Bittman, Hunt's attorney, where, after conferring privately with Bittman, he told me that I would be getting a call that evening from someone in the White House whom I had known. That night I received a call, and was urged by a man who was later identified as Anthony Ulasewicz, to plead guilty, in exchange for which I would receive Executive clemency, money while in prison, and a job after my release. The call from Ulasewicz was the beginning of an involved series of talks with him and John Caulfield, who attempted to get me to plead guilty and otherwise keep silent. My sworn statement on this matter was made before the Senate Watergate Committee on May 18, 1973.]

McCORD: Political pressure from the White House was conveyed to me in January, 1973, by John Caulfield to remain silent, take Executive clemency by going off to prison quietly and I was told that while there I would receive financial aid and later rehabilitation and a job. I was further told in a January meeting in 1973 with Caulfield that the President of the United States was aware of our meeting, that the results of the meeting would be conveyed to the President, and that at a future meeting there would likely be a personal message from the President himself. The dates of the telephone calls set forth below are the correct dates to the best of my recollection.

On the afternoon of January 8, 1973, the first day of the Watergate trial, Gerald Alch, my attorney, told me that William O. Bittman, attorney for E. Howard Hunt wanted to meet with me at Bittman's office that afternoon. When I asked why, Alch said that Bittman wanted to talk with me about "whose word I would trust regarding a White House offer of Executive clemency." Alch added that Bittman wanted to talk with both Bernard Barker and me that afternoon.

I had no intention of accepting Executive clemency, but I did want to find out what was going on, and by whom, and exactly what the White House was doing now. A few days before, the White House had tried to lay the Watergate operation off on CIA, and now it was clear that I was going to have to find out what was up now. To do so involved some risks. To fail to do so was, in my opinion, to work in a vacuum regarding White House intentions and plans, which involved even greater risks, I felt.

Around 4:30 p.m. that afternoon, January 8th, while waiting for a taxi after the court session, Bernard Barker asked my attorneys and me if he could ride in the cab with us to Bittman's office which we agreed to. There he got out of the cab and went up towards Bittman's office. I had been under the impression during the cab ride that Bittman was going to talk to both

Barker and me jointly, and became angered at what seemed to me to be the arrogance and audacity of another man's lawyer calling in two other lawyers' clients and pitching them for the White House. Alch saw my anger and took me aside for about a half-hour after the cab arrived in front of Bittman's office, and let Barker go up alone. About 5:00 p.m. we went up to Bittman's office. There Alch disappeared with Bittman, and I sat alone in Bittman's office for a period of time, became irritated, and went next door where Bernard Shankman and Austin Mittler, attorneys for me and Hunt respectively, were talking about legitimate legal matters. Alch finally came back, took me aside and said that Bittman told him I would be called that same night by a friend I had known from the White House. I assumed this would be John Caulfield who had originally recruited me for the Committee to Re-Elect the President position.

About 12:30 p.m. that same evening, I received a call from an unidentified individual who said that Caulfield was out of town, and asked me to go to a pay phone booth near the Blue Fountain Inn on Route 355 near my residence, where he had a message for me from Caulfield. There the same individual called and read the following message:

> "Plead guilty. One year is a long time. You will get Executive clemency. Your family will be taken care of and when you get out you will be rehabilitated and a job will be found for you. Don't take immunity when called before the Grand Jury."

The same message was once again repeated, obviously read. I told the caller I would not discuss such matters over the phone. He said that Caulfield was out of town.

On Wednesday evening, January 10, the same party called and told me by phone that Jack would want to talk with me by phone on Thursday night, January 11, when he got back into town, and requested that I go to the same phone booth on Route 355 near the Blue Fountain Inn. He also conveyed instructions regarding meeting Caulfield on Friday night, January 12. (Book 1, p. 132-41)

January 11, 1973 (Thursday)

DEAN: "On January 11, I received a call from O'Brien, who asked me if the message had been delivered by Caulfield. I told him that it had. O'Brien told me that McCord wanted to speak with Caulfield personally and asked me when Caulfield could meet with McCord. I told him I would try to arrange it. . . . He told me he was keeping Mitchell posted and requested I keep him posted. O'Brien said that we need a firsthand report, a firsthand reading on McCord from someone he will talk with, because he is not talking openly with his lawyer about what he plans to do. . . ."

"I called Caulfield on January 11 and told him that McCord wanted to meet with him and asked him if he would do so and take McCord's pulse as to

"During this meeting with Caulfield I received a call from either John Mitchell or Paul O'Brien requesting a report on the meeting. I told the caller that I was getting a report from Caulfield and would call back. Caulfield told me that McCord was very adamant about his plans to gain his freedom through the phone calls that he had made to the foreign embassies. I told Caulfield I really did not understand why McCord thought he could get his case dismissed by reason of the wiretaps, but I would give the matter some thought. Caulfield told me that it was his assessment that McCord would only respond to a direct request from the President.

"I told Caulfield that he couldn't make such a statement because I had no such request from the President, but suggested he meet again with McCord and keep him happy by telling him we were checking out the matter of his conversations with the embassies.

"Later that afternoon, Caulfield reported again to me that McCord was only interested in his theory about the calls to the embassies. I told Caulfield to keep in touch with McCord, but I couldn't promise anything about his calling the embassies. I told Caulfield to have McCord give him a memo on why he thought that his calls to the Embassies would result in dismissal of his case. I called O'Brien and told him what had transpired. On Monday morning I reported to Mitchell what Caulfield had reported.

"It was sometime during this period that as result of my reports of Caulfield meetings with McCord, that O'Brien, Mitchell and Mr. Alch discussed having F. Lee Bailey, Alch's partner, meet with McCord and inform him that he would personally handle his case on appeal. Mitchell was to talk with Mr. Bailey about this. I do not know what happened regarding this proposed plan. (Book 3, p. 976)

[*During trial in January 1973, Alch told me that he had F. Lee Bailey on the telephone and that Bailey wanted to discuss personally handling my case on appeal. I received the impression that I was supposed to be impressed or flattered by the offer. I refused to talk with Bailey.*]

January 14, 1973 (Sunday)

McCORD: I did not hear from Caulfield on Saturday, but on Sunday afternoon he called and asked to meet me that afternoon about an hour later at the same location on George Washington Parkway. He stated that there was no objection to renewing the motion on discovery of government wiretapping, and if that failed, that I would receive Executive clemency after 10 to 11 months. I told him I had not asked anyone's permission to file the motion.

He went on to say that "the President's ability to govern is at stake. Another Teapot Dome Scandal is possible, and the government may fall. Everybody else is on track but you. You are not following the game plan. Get closer

January 25, 1973 (Thursday)

McCORD: About 10:00 a.m. on Thursday, January 25, 1973, in a meeting lasting until about 12:30 a.m., we drove in his (Caulfield's) car toward Warrenton, Virginia, and returned, and a conversation ensued which repeated the offers of Executive clemency and financial support while in prison, and rehabilitation later. I refused to discuss it. He stated that I was "fouling up the game plan." I made a few comments about the "game plan." He said that "they" had found no record of the interception of the two calls I referred to, and said that perhaps it could wait until the appeals. He asked what my plans were regarding talking publicly, and I said that I planned to do so when I was ready, that I had discussed it with my wife, and she said that I should do what I felt I must and not to worry about the family. I advised Jack that my children were now grown and could understand what I had to do when the disclosures came out. He responded by saying that, "You know that if the Administration gets its back to the wall, it will have to take steps to defend itself." I took that as a personal threat and I told him in response that I had had a good life, that my will was made out and that I had thought through the risks and would take them when I was ready. He said that if I had to go off to jail that the Administration would help with the bail premiums. I advised him that it was not a bail premium, but $100,000 straight cash and that was a problem I would have to worry about through family and friends. On the night before sentencing, Jack called me and said that the Administration would provide the $100,000 in cash if I could tell him how to get it funded through an intermediary. I said that if we ever needed it, I would let him know. I never contacted him thereafter; neither have I heard from him. (Book 1, p. 132-41)

[*Dean testified that on March 22, 1973;*

"I returned to Haldeman's office where Mitchell and Haldeman and I had lunch. During lunch there was some continued conversation about the general problems.

"Mr. Mitchell raised the fact that F. Lee Bailey who had been 'very helpful' in dealing with McCord, had a problem that he would like to bring up. He then said that Mr. Bailey had a client who had an enormous amount of gold in his possession and would like to make an arrangement with the government whereby the gold could be turned over to the government without the individual being prosecuted." (Book 3, p. 1001)]

[*During the trial, prior to their pleading guilty, all of the four Miami men, Barker, Gonzales, Martinez and Sturgis told me that intense pressure had been brought to bear upon them to plead guilty. They stated that the pressure was brought to bear by E. Howard Hunt and they finally succumbed to the pressure. I have testified to this fact before the Special Prosecutors, as has their former attorney Henry Rothblatt. Barker informed me on the evening of January 7, 1973, in addition, that approximately two weeks earlier Hunt had*

"I again repeated to them I did not think it was possible to perpetuate the cover up and the important thing now was to get the President out in front." (p. 2335)

[Haldeman has testified that in late April, 1973 he listened to the March 21, 1973 tape, at Nixon's request. He did so in an anteroom off his White House office. Nixon had listened to it earlier. Haldeman received the tape from Steve Bull. Haldeman said he was present for 40 minutes of the meeting with Dean and Nixon on March 21st. (Book 8, p. 305]

March 22, 1973 (Thursday)

DEAN: "... the arrangements had been made to have a meeting after lunch with the President with Ehrlichman, Haldeman, Mitchell and myself. Mr. Mitchell came to Washington that morning for a meeting in Haldeman's office in which Ehrlichman, Mitchell, Haldeman and myself were present. I recall that one of the first things that Ehrlichman asked of Mitchell was whether Hunt's money problem had been taken care of. Mitchell said that he didn't think it was a problem any further. There then followed a general discussion of the status of the Senate hearings, and the discussion never got down to specifics.

"It had been my impression that Haldeman and Ehrlichman were going to try to get Mitchell to come forward and explain his involvement in the matter. This did not occur. Mitchell said that he thought that everything was going along very well with the exception of the posture of the President on Executive privilege. He said that he felt that the President was going to have to back down somewhat or it would appear he was preventing information from coming out of the White House.

"I recall that Ehrlichman left the meeting before it had terminated because he was going to meet Secretary Shultz, who was coming in from out of the country. I was also called out of the meeting about noon time when a message was sent to me by Ziegler that it was important he see me immediately. This had to do with the statement that was running on the wires that Gray had said that I had probably lied and Ziegler wanted to know how to handle it. Accordingly, I departed the meeting and went into a meeting with Ziegler and Moore to discuss Gray's comment. I returned to Haldeman's office where Mitchell and Haldeman and I had lunch.

"During lunch there was some continued conversation about the general problems. Mr. Mitchell raised the fact that F. Lee Bailey, who had been very helpful in dealing with McCord, had a problem that he would like to bring up. He said that Mr. Bailey had a client who had an enormous amount of gold in his possession and would like to make an arrangement with the government whereby the gold could be turned over to the government without

the money for attorney's fees. "Mitchell approved it, this was just shortly before Hunt was sentenced on March 23, 1973." (p. 4617-19)

March 22, 1973 (Thursday)

Richard Nixon traveled to Key Biscayne Florida this date.

HUNT: He testified that he had met with Paul O'Brien, CRP attorney in William O. Bittman's law firm office. Hunt knew O'Brien was Bittman's contact at CRP in connection with the payment of legal fees for Hunt by CRP.

Hunt discussed $60,000 in legal fees and told O'Brien he had engaged in "seamy activities for the White House and asked for priority consideration" for his financial needs.

Hunt said O'Brien told him that he "was finding himself increasingly ineffective as a go-between." O'Brien told Hunt "he recognized that assurances had been given, that to some extent they had in the past had been carried out, but he felt he was becoming less and less effective as an intermediary." O'Brien "suggested that I (write) . . . a strongly worded memorandum . . . to Mr. Colson." (Book 9, p. 3705)

March 23, 1973 (Friday)

[Alch, my attorney, told me while in Judge Sirica's court, that morning, that Paul O'Brien was in the courtroom. I had never seen him before that morning.]

DEAN: "Sirica read McCord's letter in open court. O'Brien gave me the high points of the letter as they had been reported to him by someone from the courthouse. He also told me that McCord had only hearsay knowledge. I then called Ehrlichman to tell him about it. He said he had a copy of the letter and read it to me. I asked him how he received a copy so quickly. He responded: 'It just came floating into my office.' He asked me what I thought about it and I told him I was not surprised at all and repeated to him what O'Brien had told me, that McCord probably had only hearsay knowledge. He asked me if I was in my office and I informed him that I was a prisoner of the press and would be in shortly.

"After my conversation with Ehrlichman, the President called. Referring to our meeting on March 21st and McCord's letter, he said: 'Well, John, you were right in your prediction.' He then suggested I go up to Camp David and analyze the situation. He did not instruct me to write a report, rather he said to go to Camp David, 'Take your wife, and get some relaxation.' He then alluded to the fact that I had been under some rather intense pressure lately, but he had been through this all his life and you cannot let it get to you. He said that he was able to do his best thinking at Camp David, and I should get some rest and then assess where we are and where we go from here and report back to him. I told him I would go.

June 17 — Mid September 1972

Then between the date of the arrests and mid-September, 1972, according to Jeb Magruder, a "CIA defense" for the defendants was discussed in the many meetings which he had with John Mitchell. Magruder said that he didn't actively discuss it himself but that others in the meetings did so. (p. 1972)

December 21, 1972

By mid-December 1972, the plot thickened. Gerald Alch approached me on December 21, 1972, and stated that it was his recommendation as my attorney that I use a CIA defense — a false defense — that the Watergate operation was a CIA operation. He continued throughout the meeting to encourage me to do so. Again on December 26, 1972, he repeatedly tried to get me to use such a defense.

Simultaneously with the approach being made to me by Alch, the four Miami men were being pressured to use a similar defense. They were encouraged to do so by Hunt, Bernard Barker told me on January 7, 1973. My violent reaction to the use of such a false defense resulted in it being dropped.

Summary

General Vernon Walters has testified that the order to misuse CIA the first time, on June 23, 1972, came directly from H. R. Haldeman.

John Dean said that the second order to misuse CIA, on approximately June 28, 1972, came from John Mitchell, Director of CRP, at the suggestion of Robert Mardian, an assistant of Mitchell.

Gerald Alch indicated to me that the idea to misuse CIA (the third time,) on December 21, 1972, came to him from William O. Bittman, attorney for Hunt. Who Bittman received it from is not known. Paul O'Brien, attorney for CRP, may have further knowledge on this subject.

CHAPTER 55

EXECUTIVE CLEMENCY

The subject of Executive clemency, Executive pardon, or a Presidential commutation of sentence, as it has been variously described in Senate Watergate testimony, is a highly crucial issue for resolution. Was it offered by President Richard Nixon?

Testimony from Dean, Magruder, and McCord have all reflected that Executive clemency was promised the defendants in 1972 and in 1973 as a device for trying to keep the defendants silent, and in order to avoid others in the White House and in CRP from becoming implicated by the defendants' testimony.

The promise of Executive clemency constitutes bribery, grounds for impeachment of the President, since it was promised prior to plea or conviction of the defendants and for the purpose described.

Dean has testified that both Ehrlichman and Colson had told him in early January 1973, that Richard Nixon had promised them that Hunt would receive Executive clemency and that they could so advise Hunt. Dean said Nixon twice raised with him the fact that he had promised Hunt Executive clemency through Ehrlichman and Colson.

I received a promise of Executive clemency from Dean, through White House agents John Caulfield and Anthony Ulasewicz, in January 1973.

Bernard Barker told me on January 8, 1973, that he was going to William O. Bittman's office to receive word about Executive clemency. My attorney Alch, also said that Barker was to receive such word from Bittman that day.

Magruder has testified that he received promises of Executive clemency from both John Mitchell and John Dean in 1972 and from Mitchell again in 1973.

Liddy allegedly received confirmation of his receiving Executive clemency in word passed to him by Egil Krogh.

The testimony on this subject which has occurred, is set forth below.

August 16, 1972

Magruder has testified that while Dean was coaching him for his Grand Jury appearance on August 16, 1972, Dean told him "even if the worst happened, everything would be taken care of, including Executive clemency." (p. 2011)

September, 1972

Magruder testified that when he once again had to appear before the Federal Grand Jury he talked with John Mitchell and John Dean and asked them for an assurance regarding Executive clemency. "They made assurances about income and being taken care of . . . and a job afterward . . . and also that there would be a good opportunity for Executive clemency." (p. 1924-26)

Early October and November, 1972

I have testified that in early October, 1972, at a restaurant at 1820 M Street, N.W., Washington, D.C., I first heard about Executive clemency when my attorney, Gerald Alch, told me he had just come from a meeting in the office of William O. Bittman, E. Howard Hunt's lawyer. Alch's first words were, "Nobody gets up on that stand." In return, Alch said, "all the men are to be given Executive clemency, money while in prison and rehabilitation afterwards."

During the month of October and November, 1972, I continued to hear on several occasions the same message from E. Howard Hunt and Mrs. Hunt — that the defendants were promised Executive clemency, money while in prison, and "rehabilitation afterwards." Hunt said his message came to him through William O. Bittman, his attorney.

Mitchell denied that he told Dean to promise McCord Executive clemency. (Book 4, p. 1673) Mitchell admitted that Dean told him of a dialogue going on between Hunt, Bittman, and Colson about Executive clemency. (Book 4, p. 1674)

January 7, 1973

In a meeting with Bernard Barker on the evening of January 7, 1973, at the Sheraton Carlton Hotel restaurant in Washington, he told me that Hunt was going to plead guilty. Barker stated that this was alright for Hunt, because he had received an assurance from the White House that he would receive Executive clemency, and that Hunt had the clout to insure that he would get it. Barker felt that he personally needed more assurance than word, third-hand through Hunt, that the four Miami defendants would also receive it.

January 8, 1973

On the afternoon of January 8, 1973 my attorney, Gerald Alch, told me that William O. Bittman, Hunt's attorney, wanted to talk with me after court that day to discuss Executive clemency with me. I told Alch I had no interest in hearing about it. Alch told me, "I think you should." Realizing that the White House was up to another new "game plan," I decided to go and hear from Bittman what was up. As I left the court that afternoon with Gerald Alch and Bernard Shankman, his local Washington counsel, Bernard Barker asked if he could ride to Bittman's office with us and we agreed. I presumed that Bittman was going to talk to both of us together, and became angry at the arrogance of Bittman. Alch took me aside when we arrived at Bittman's address and Barker left saying he was going up to see Bittman. A half hour later I went up with Alch and Shankman to Bittman's office, where Bittman and Alch disappeared for several minutes. Alch finally came back and told me I would be hearing that evening from a man I had known at the White House. I presumed it would be John Caulfield who had recruited me for the CRP position in September, 1971.

That evening I received a telephone call from an individual who I later learned was a White House agent, Anthony Ulasewicz. He told me to go to a nearby telephone booth, which I did, where he read the following message which he said came from Caulfield:

> "Plead guilty."
> "One year is a long time."
> "You will get Executive clemency. Your family will be taken care of and when you get out you will be rehabilitated and a job will be found for you. Don't take immunity if called before a Grand Jury."

Through a series of meetings all through the January 1973 trial, Caulfield continued to try to get me to accept Executive clemency and remain silent. (Book 1, p. 132-41)

SUMMARY

Defendant McCord's Federal constitutional rights — the 5th amendment right to a fair trial; the 5th amendment right to due process; his 6th amendment right to proper counsel before and during trial; his 4th amendment right against unreasonable search and seizure; and his 14th amendment right to equal protection under the law — all of these have been denied to McCord. The denial of any *one* of these is sufficient grounds for his release from detention or imprisonment.

In addition — in this denial of McCord's constitutional rights, extreme prejudice occurred to McCord by the actions of the Federal government, especially of the White House and the Department of Justice prior to and during trial. Such prejudice was as extreme as can occur from one's own government, during trial especially, when White House aides and agents harassed and sought to bribe McCord to remain silent and take Executive clemency, at the direction of John Mitchell, former Director of CRP. The aides were aided and abetted by Mitchell's lawyer for CRP, Paul O'Brien, and finally, and more detrimentally, aided and abetted as a part of this conspiracy by McCord's own lawyer, Gerald Alch. Sworn Senate Watergate Committee testimony supports these facts. (cite testimony of Anthony Ulasewicz, John Caulfield, John Dean, Jeb Magruder, Fred LaRue, Herbert Kalmbach and James McCord).

Tampering with a defendant during trial — especially when such tampering and harassment occurs by agents of the White House, one a Federal law enforcement official and impeding the due course of justice are as serious crimes as can occur during trial, especially when such occurrences were accompanied by threats, which can be construed as threats of violence against the defendant.

Further, there was abuse of the trial procedure by the Federal prosecutors, as asserted and documented in a 100-page appendix to a "Report to the Federal Prosecutor" by the American Civil Liberties Union, filed in June 1973. This report documented many abuses, as for example that the prosecutors limited the investigation and failed to call key witnesses such as John Mitchell, Maurice Stans and John Dean who should have been called to testify. Dean, in fact, had custody of White House files of Howard Hunt for a week in June 1972, and was not even called before the Federal Grand Jury, much less called as a witness by the government during trial. And in the trial itself, the government prosecutor's key witnesses were two men who committed perjury and on whose testimony the opening and closing statements of the prosecutors rested. Further, there was subornation of perjury by one of the key witnesses of another and third key government witness, and the prosecutors suppressed this information from the jury and the

judge, after defense attorneys failed to cross-examine with information in their possession.

In addition to violating McCord's 6th amendment rights to proper defense counsel prior to and during trial, his defense attorney Gerald Alch violated, in a conspiracy with White House and CRP officials, McCord's 4th amendment right against unreasonable search and seizure. Confidential communications are now held by the Supreme Court to be within the protection of the 4th amendment (Osborn v. U.S., 385 U.S. 323, 1966). The scope of the right to counsel includes, without limitation, *the right to consult with counsel in private, and free from official surveillance. "Official monitoring of conversations between an accused and his attorney . . . through a government informer . . . violates the accused rights to counsel."* (Black v. U.S., 385 U.S. 26, 1966). John Dean in sworn testimony related detail after detail of Alch's cooperating with, and actually meeting with, John Mitchell and Paul O'Brien, Director of CRP and attorney for CRP respectively, immediately prior to and during trial, resulting in haressment of McCord and efforts to get him to remain silent. Mitchell was, in fact the superior and principal of McCord's, in the Watergate operation, authorizing it for CRP. *Thus Alch, himself, was that "government informer" breaching the confidentiality of communications between attorney and his client McCord,* executing extreme prejudice against his client, and violating the 4th amendment right of McCord against unreasonable search and seizure. Ulasewicz and Caulfield also served as government informers, during the actual trial itself, in violation of the 4th amendment.

McCord's 14th amendment right to equal protection under the law was denied, in that White House officials Robert Haldeman and John Ehrlichman knew prior to, and at the time of indictment and trial, that others, specifically John Mitchell, John Dean and Jeb Magruder, were also involved in the Watergate operation planning yet they allowed only the seven original defendants to be indicted and tried.

The Supreme Court has the power to review by certiorari any State Court or Federal Court convictions to determine whether the defendant's constitutional rights have been abridged. (Thompson v. Louisville 362 U.S. 199, 1960). There have been massive violations of McCord's constitutional rights, as the above reflects, and the above is only a part of the whole sordid story.

The denial of right to counsel *alone* vitiates any conviction obtained (the "automatic" reversal rule). Neither prejudice nor unfairness need be shown (Gideon v. Wainwright, 372 U.S. 335, 1965). Both massive prejudice and unfairness did, in fact, occur, however.

The case was not fairly put to the jury, and there was massive "prosecutorial overreach" (and "underreach") in the trial as the ACLU brief so accurately reflects.

and John Dean told Patrick Gray to destroy files of E. Howard Hunt which they gave him in the office of Ehrlichman and which Gray subsequently destroyed on Christmas week, 1972. (p. 7072-73.)

The Law

1. "Suppression of evidence favorable to the defendant who has requested it denies due process where the evidence is material to either the guilt or punishment."[1]

2. "Even though the prosecution witness's testimony is not an outright perjury, the prosecutor owes a duty to reveal information necessary to correct any misleading impression created by such testimony of which the prosecution was aware."[2]

THE SPECIAL PROSECUTORS HAVE MANY AREAS OF MISLEADING INFORMATION TO CORRECT IN CONNECTION WITH THE MATTERS DESCRIBED ABOVE.[3]

Footnotes

1. Brady v. Maryland, 373 U.S. 83.
2. Alcorta v. Texas 355 U.S. 28, 1957.
3. "Where the duty to disclose otherwise exists, the fact that exculpatory evidence is in the possession of the police, but is unknown to the prosecuting attorneys, does not lessen the government's duty to disclose. Nor does the fact that defense counsel should have known about the suppressed evidence lessen the government's duty to disclose." (254 F. Supp. 218)

If there is a duty of the prosecutors to disclose in the case just cited exculpatory evidence in possession of a police agency, how much greater is the duty of the Special Prosecutor to disclose exculpatory evidence in possession of the White House prior to and during the January 1973 Watergate trial itself. YET, THE SPECIAL PROSECUTORS HAVE BEGUN NO COURT ACTION TO DISCLOSE ANY OF THE EXCULPATORY EVIDENCE IN THEIR POSSESSION.

IV. CONSPIRACY BY WHITE HOUSE AND OTHER GOVERNMENT PERSONNEL, CRP OFFICIALS, AND McCORD'S DEFENSE ATTORNEY, TO HARASS, BRIBE AND TAMPER WITH McCORD PRIOR TO AND DURING TRIAL.

The Facts

Sworn Senate testimony in the summer of 1973, is packed with details of efforts to harass McCord prior to and during the January 1973 Watergate trial, to his prejudice.

Such harassment included efforts by Anthony Ulasewicz, White House agent; John Caulfield, a U.S. Treasury Department Law Enforcement Official; John Dean, Counsel to the President of the United States; John Mitchell, Campaign Director of the Committee to Re-elect the President; Paul O'Brien, attorney for CRP; and Gerald Alch, McCord's defense attorney. Much of this was admitted under oath by these individuals.

The harassment involved tampering with a defendant in a Federal Court proceeding, impeding justice, bribery, obstruction of justice, attempts to deny the civil rights of a defendant and other Federal crimes, including misprision of a felony.

The harassment took various forms, including interference with McCord during the very trial itself, trying to get him to variously plead guilty, agree

to take Executive clemency, take payments while in prison, and a job later, with the understood and inferred quid pro quo that McCord would remain silent and not implicate any higher-ups in CRP or the White House in the Watergate operation, all of which constituted bribery as it is defined under Federal statutes, and to use a false defense that the Watergate operation was a CIA operation.

The testimony of John Dean is illustrative of the conspiracy which existed:

> "It was sometime during this period, January 1973, during trial that as a result of my reports of Caulfield's meetings with McCord, that O'Brien, Mitchell and Alch discussed having F. Lee Bailey, Alch's partner, meet with McCord and inform him that he would personally handle his case on appeal. Mitchell was to talk with Mr. Bailey about this."
>
> "During lunch (between Haldeman, Ehrlichman, Mitchell and Dean on March 21, 1973, at the White House) there were some continued conversations about the general problems. Mr. Mitchell raised the fact that F. Lee Bailey, who had been very helpful in dealing with McCord, had a problem that he would like to bring up. He said that Mr. Bailey had a client who had an enormous amount of gold in his possession and would like to make an arrangement with the government whereby the gold could be turned over to the government without the individual being prosecuted for holding the gold. Mitchell was addressing his request for assistance to Haldeman . . ."

The conspiracy of Alch, Ulasewicz, Caulfield, Dean and Mitchell to bribe McCord during the trial with promises of Executive clemency, money while in prison, and a job later, are well documented in the Senate Watergate Testimony. (Book One, p. 132-141 and Book Three, pp. 972-76, 1001).

The meetings of McCord's attorney, Gerald Alch, with John Mitchell and Paul O'Brien, CRP attorney, before and during trial, planning how to "handle McCord" are documented in Book One, p. 974-76. Mitchell was disturbed because Alch, before and during trial, could not keep him fully informed about McCord's plans and intentions because McCord did not trust Alch and was not telling him; so Mitchell used Ulasewicz and Caulfield to serve as informants and to tamper with defendant McCord during trial.

The harassment, bribery, tampering and interference in a judicial proceeding involved denial of equal protection under the law, due process, denial of the 6th amendment right to counsel, denial of the 4th amendment right against unreasonable search and seizure and of other constitutional rights.

The Law

1. "The remedy for a violation of the defendant's constitutional rights is a dismissal of the prosecution entirely." (304 F 2d 394)

2. "Where there is an abuse of the trial process resulting in prejudice to the accused, by way of harassment and the like . . . (acquittal is justified)." (U.S. vs Jorn)

V. INEFFECTIVE, CORRUPT, AND FRAUDULENT DEFENSE COUNSEL

Canon 4 of the Lawyers Code of Professional Responsibility provides, "a lawyer should preserve the confidences and secrets of a client."

Judge Irving R. Kaufman writing the decision for the Court of Appeals of the Second Circuit, New York City in May, 1973, issued a vehement admonition against "even the appearance of impropriety" in judicial proceedings. He declared:

> "The stature of the profession and the courts, and the esteem in which they are held, are dependent upon the complete absence of even a semblance of improper conduct."

Judge Kaufman's decision came at a time of widespread concern about possible conflicts of interests in the government's investigation of the Watergate scandal in Washington. Judge Kaufman's decision came in a case involving David Rabin, an attorney representing Emle Industries in which a question of conflict-of-interest had arisen.

Judge Kaufman went on in his ruling to say;

> "We have said that our duty in this case is owed not only to the parties involved . . . but to the public as well . . . These interests require the court to exercise its leadership to insure that nothing, not even the appearance of impropriety, is permitted to tarnish our judicial process."
>
> *"The dynamics of litigation are far too subtle, the attorney's role in that process is far too critical, and the public's interest in the outcome is far too great to leave room for even the slightest doubt concerning the ethical propriety of a lawyer's representation in a given case."*

John Dean has testified (Book 3, p. 973-76) that:

> ". . . (on January 10, 1973, during trial) McCord's lawyer (Alch) was having problems with him . . . (and that McCord should be promised Executive clemency as had Hunt to keep him quiet) . . . Both (John) Mitchell and (Paul) O'Brien felt that McCord might be responsive to an assurance from Caulfield because Hunt, Bittman *and his lawyer, Alch, had lost rapport with him.*"

Dean went on to testify that he, through Anthony Ulasewicz, and John Caulfield, White House agent, promised McCord Executive clemency and money during the trial itself. Ulasewicz told McCord to plead guilty and he would get Executive clemency and money in return. (Book 1, p. 132-41)

McCord reported pressure on him from his own attorney to plead guilty, in letters McCord sent to CIA in late December, 1972, and early January, 1973 (Book 9, p. 3834-42) McCord testified that his own attorney, Gerald Alch, maneuvered him, as a part of a conspiracy to get him to plead guilty and remain silent, to the office of William O. Bittman, attorney for Hunt,

on January 10, 1973. There he received a message that he would be contacted by an agent of the White House, John Caulfield regarding Executive clemency. McCord has reported to the Massachusetts Bar Association and to the Federal Bureau of Investigation that these efforts by Alch and the White House, in conspiracy with John Mitchell and attorneys for CRP, constituted bribery, tampering with a party to a court proceeding, harassment and denial of his rights to counsel, to a fair trial, to due process, and were a denial of his 14th amendment rights to equal protection of the law, free from the "evil eye and unequal hand" in the faithful execution of the law by the Executive Office of the President. This characterization (an evil eye and an unequal hand) is cited in the Supreme Court decision in *Yick Wo v. Hopkins* in 1886.

Dean further testified:

> "It was sometime during this period that as a result of my reports of Caulfield meetings with McCord, that (Paul) O'Brien, (John) Mitchell and (Gerald) Alch discussed having F. Lee Bailey, Alch's partner, meet with McCord and inform him that he would personally handle this case on appeal. Mitchell was to talk with Mr. Bailey about this." (Book 3, p. 976).

McCord has said that during trial in January 1973, Alch did in fact tell him that he had F. Lee Bailey on the telephone, and that Bailey wanted to discuss personally handling McCord's case on appeal. McCord said that he received the impression that he was supposed to be impressed or flattered by the offer. McCord said that he refused to talk with Bailey.

McCord has testified, in addition, that the harassment by White House agents, first Ulasewicz, and then Caulfield, continued all during the trial and included harassment on the following dates, trying to get him to plead guilty and take Executive clemency, in return for remaining silent: January 8, 9, 10, 11, 12, 14, 15, 16, 25 and 29, 1973, and that many of these contacts occurred late in the night hours for the purpose of wearing McCord down.

Dean has further testified, that on March 22, 1973, he had lunch with H. R. Haldeman, the President's Chief of Staff, and with John Mitchell, Director of CRP, and that,

> "Mr. Mitchell raised the fact that F. Lee Bailey, who had been 'very helpful' in dealing with Mr. McCord had a problem that he would like to bring up. He then said that Mr. Bailey had a client who had an enormous amount of gold in his possession, and would like to make an arrangement with the government whereby the gold could be turned over to the government without the individual being prosecuted." (Book 3, p. 1001).

McCord has reported that he believed that Bailey was collecting on a political debt — he had helped Mitchell with McCord, now it was time to "pay off."

McCord has reported that there were a large number of other actions of Alch which denied him effective counsel during the trial, including such acts as failing to cross examine during the trial.

carton contained "bugging plans" of E. Howard Hunt's (Protective order filed by Attorney Peter Wolf on April 19, 1973); and by his failure to make known to judge and jury during the January 1973 trial allegations by Hugh Sloan of subornation of perjury by Jeb Magruder. Defense attorneys failed to cross examine Magruder on these allegations.

10. Dean's adverse interest in the outcome of the trial is reflected by acts of bribery, harassment and tampering with a party to a court proceeding, (James McCord) via White House agents John Caulfield and Anthony Ulasewicz, during the January 1973 trial. (Book 1, p. 254-260; Book 1, p. 285-91. Book 1, p. 133-141) McCord testimony); and by numerous other acts in the cover up.

General Vernon Walters of CIA also has testified that John Dean came to him on three occasions in June and July, 1972, trying to get CIA to fund the Watergate defendant's legal expenses, bond and living expenses, and otherwise unlawfully trying to involve CIA in the Watergate case, including trying to get CIA to have the FBI slow down or cease its investigation in Mexico. As a result General Walters in conversations with Dean threatened to resign from CIA because of this type of unlawful White House pressure, and to go to Congress on the matter. (Book 9, p. 3408-11)

President Nixon, John Dean, Henry Petersen, and Earl Silbert's adverse interest in the outcome of the trial is further documented in concerted and successful efforts to keep Maurice Stans, John Mitchell, Bruce Kehrli, Charles Colson, Fred Fielding and other White House aides away from the Federal Grand Jury before the January 1973 trial. (p. 2220-21)

11. According to *The Washington Post* of March 25, 1973, Henry Rothblatt, former attorney for the four Miami men, has asserted that political pressure was brought to get his clients to plead guilty and accept money. Rothblatt was reportedly planning in March 1973, to seek a post-conviction hearing to show that Hunt, acting on behalf of others, offered each of the four Miami men as much as $1,000 for each month spent in jail and a promise of eventual clemency if they would enter a guilty plea. Rothblatt planned to call the four Miami men to the stand to testify about an alleged meeting at the Arlington Towers apartment in Arlington, Virginia, in which the arrangements for the pleading were reportedly finalized.

McCord testified during the Senate Watergate hearings, under oath, that all four of the Miami men had told him that they were put under intense pressure to plead guilty and that they were told that if they did so they would receive money while in prison.

[*McCord has also stated that during the early part of the January, 1973, trial, his attorney Gerald Alch told McCord that Assistant United States Attorney, Earl Silbert, called Henry Rothblatt into his office and threatened legal and bar association action against Rothblatt if he did not plead his men guilty.*]

12. H. R. Haldeman ordered Deputy Director Vernon Walters on June 23, 1972, to go to acting FBI Director Patrick Gray and tell him;

"I think he also told me (Gray) that we had the five people and the matter ought to be tapered off there." (Book 9, p. 3499)

INDEX

CONTENTS

CHAPTER 17

June 18, 1972: Who Authorized the Removal of Plans to 'Bug' the Watergate from White House Files?

Dean has testified that four or five weeks after the arrests of June 17th, Paul O'Brien, lawyer for CRP, had learned from Hunt's attorney, William Bittman, that Hunt and Colson had spoken over the telephone on the weekend of June 17-18th and that Hunt had told Colson to get the materials out of his (Hunt's) office safe. (p. 2169).

Did Colson take any measures to do so?

We don't know, but someone did.

On April 19, 1973, Peter Wolf, a Washington D.C. lawyer, filed for a protective order in the U.S. District Court in which he said:

> "Late in the summer of 1972, I received a call from a client I had represented in a certain matter. He inquired whether he was in danger of violating the law if he had hidden in his possession approximately eight cardboard cartons containing, among other things, the contents of E. Howard Hunt's desk . . . in the White House before the FBI got there, including plans to 'bug' the Watergate . . . Very shortly after the first conversation, I telephoned Principal Assistant United States Attorney Earl Silbert and told him these facts and received an opinion from him that he did not think my client was committing any crime . . . my client worked for CRP . . . he had been asked to pick up the cartons at the Executive Office Building on Sunday after the Watergate break in (June 18, 1972), that a pass would be waiting for him at the guard entrance, that no questions would be asked when the cartons were removed from the building, and none were."

Silbert denied the above allegation by Wolf. Who is telling the truth, Wolf or Silbert?

CHAPTER 18

White House Oppression: The Prelude

In my letter to Judge Sirica of March 19, 1973, I spoke of anticipated retaliation against me, my family and my friends, because of my coming forth with the story of the perjury and other corruption of justice which occurred during the Watergate trial of January 1973.

vestigation for mail fraud, and was indicted for it in May 1973. Calls from Bailey or Alch to John Mitchell, or CRP attorneys Paul O'Brien or Kenneth Parkinson, if my case was discussed therein, would have been highly important to know, and would have been corroborative of Dean's assertions indicating collusion between these men.

John Mitchell and Richard Nixon had plenty of motivation for intercepting my telephone calls. What I was saying on the telephone was of the greatest possible concern to them. The ability of a government to remain in power hung in the balance, dependant on my disclosures. This was particularly true just before the November 1972 elections, when the signs of the wiretapping of our telephones were the greatest, and when the re-election of a President was at stake.

CHAPTER 25

Early October, 1972: "Taking the Pulse ... Establishing the Rapport ... the Attorneys, II"

On a Wednesday early in October 1972, Alch was in Washington working in Bittman's office planning for the trial — "trial strategy." He had asked me to meet him at the Colonial Restaurant, 1820 M Street, NW for lunch which I did. There he opened the conversation with a most unusual statement which was "I've just come from Bittman's office. Nobody gets up on that (witness) stand during trial. In return they will get executive clemency, money while in prison and rehabilitation afterwards." He repeated it, "Nobody", with emphasis on the nobody for my benefit, and looking directly at me, "gets up on that stand." It was more an order than a statement. My reaction to myself was "well, this is interesting, what are they up to now." (William O. Bittman was Hunt's attorney.) Getting no reaction from me on this opener, Alch launched into his next interesting comment. "Why aren't you taking the money from Mrs. Hunt?" he asked. I went over my concerns that the whole business had the appearance of a control mechanism to keep the men quiet prior to the Nixon election by the use of money as a weapon and a tool. Between that concern and the surveillance I had experienced on the 19th of September, I had decided to take no further money in order to be completely free to pursue whatever course of action my conscience dictated without being obligated. Alch berated me and then asked me a question, rather unusual in the wording and context. It was, "just what would it take for you to turn state's evidence?" It was put in manner, tone, and in the sense of "what provocation by others would set it in motion." It was not put in the sense that "I think you ought to do it," but rather as though he were feeling me out, trying to get a reading for someone else of my state of mind, how close I was to telling the story. I told him that I was going to follow my own course of action, that I would not take immunity from the govern-

ment because my testimony would seal the fate of the others who had been indicted with me, but that when the time was right I would take my own course of action. He fell silent at that statement.

A week later we were to meet again when he again came into town and was at Bittman's office. He requested that I join him at Bittman's office and on arrival I found Liddy and Hunt there with Bittman. While the meeting was friendly, I received the distinct impression that Bittman and Alch were trying to get a feel of the lay of the land, "taking our pulse" as Dean was to call it, seeing who was ready to talk, who was not, etc. While there, we discussed and signed some affidavits pertaining to electronic and physical surveillance. Liddy, Hunt and I had detected both electronic and physical surveillance and our motions were designed to determine whether the government was involved.

CHAPTER 26

The December 1972 Telegrams to William Bittman and Bernard Barker

On December 4, 1972, Judge Sirica stated in open court that the jury in January, 1973, would want to know "who hired the men for the Watergate Operation, and why."

On December 6, 1972, the *Washington Star* carried an article of an interview with the prosecutors, answering Judge Sirica's query, stating that "Reliable (prosecution) sources state that McCord recruited the four Cubans and that they believed that they were working for the President on an extremely sensitive mission." This was, of course, untrue.

This appeared to me to be laying the groundwork for a false claim at the trial that I was the "ringleader of the Watergate Plot." This would draw attention away from Hunt and Liddy, and in turn, from the White House, since both of them had formerly worked at the White House.

That same evening, December 6, 1972, I sent telegrams to William O. Bittman, attorney for Hunt, and to Bernard Barker's residence in Miami, Florida, stating that the *Star* story was untrue as they both knew. I asked for comments by return mail from Barker. I also wrote Hunt a letter on the matter stating that, as he also knew, the story was untrue, and he could either correct it or I would do so. Copies of the telegrams are presumably still on file at the Western Union Company.

This article was another of the many examples of the government prosecutors violating, with impugnity, Judge Sirica's early October 1972 order forbidding

public comment on the Watergate case. It turned out that this order was really only binding upon the defendants. The prosecutors time after time violated it.

In the telegrams and letter to Hunt in early December, 1972, I was trying to head off an effort falsely to lay the recruitment of the Cubans off on the writer, which would, in turn, shift the focus of the trial off of those formerly connected with the White House, namely, Liddy and Hunt. Apparently this effort was successful. The prosecutors dropped that ploy, after the telegram went to Bittman, and after I discussed the matter with F. Lee Bailey's law firm.

CHAPTER 27

My December 1972 Letter to John Caulfield

I wrote a letter to John Caulfield during the week of December 25, 1972. Angered because of what appeared to me to be a ruthless attempt by the White House to put the blame for the Watergate operation on CIA, where it did not belong, I sought to head it off by sending a letter to Caulfield. The letter was couched in strong language because it seemed to me at the time that this was the only language that the White House understood. The letter read as follows:

> "Dear Jack: I am sorry to have to write you this letter. If Helms goes and the Watergate Operation is laid at CIA's feet where it does not belong, every tree in the forest will fall. It will be a scorched desert. The whole matter is at the precipice right now. Pass the message that if they want it to blow, they are on exactly the right course. I'm sorry that you will get hurt in the fallout."

The letter was unsigned. I knew that Caulfield would know its source.

I was later to learn during Senate testimony that Caulfield had given the letter to John Dean, and he in turn had turned it over to John Mitchell via Paul O'Brien, CRP attorney. Mitchell and Paul O'Brien were obviously working closely together, even though Mitchell was no longer Director of CRP, and was in New York City, while O'Brien was in Washington.

Mitchell and CRP thus appear to be receiving any information coming to the White House officially, or privately, which they wanted during the Watergate cover up, from June 17, 1972 to March 23, 1973.

Office building and placed walkie-talkies and other equipment from the Watergate operation into his White House safe.

On June 17 or 18, 1972, according to Dean, "Hunt and Colson had spoken over the telephone and Hunt told Colson to get the materials out of his safe, "according to word reaching Dean from Paul O'Brien, CRP attorney, three or four weeks after the arrests on June 17th. Dean said O'Brien had received this information from Hunt's attorney, William O. Bittman. (p. 2169)

Dean also testified that John Ehrlichman had spoken with Colson over the June 17-18 weekend about Hunt. (p. 2169)

According to Dean, Colson told Dean that on Saturday June 17, or Monday June 19, 1972, Douglas Hallett who worked for Colson, was talking with a wire service reporter, while Hunt was in the other office. "Colson said to me (Dean) something to the effect: 'Can you believe what a story the reporter might have if Hunt had come walking out of his office while Hallett was being interviewed?' " (p. 2185)

Peter Wolf, a Washington, D.C. attorney has testified in a court deposition dated April 19, 1973, that on June 18, 1972, a client of his had, on request, gone to the Executive Office Building and picked up several cartons containing material which had come from Hunt's office there. Included in the cartons, according to Wolf, was a "bugging plan" relating to the Watergate operation. Wolf later in the summer called Earl Silbert, Watergate prosecutor, who told him, Wolf said, that he didn't think Wolf's client was violating any law by transporting the cartons and having custody of them.

Silbert denied the allegation. [*This whole matter has never been sorted out, as to whether Silbert is telling the truth, or Wolf.*]

On Monday, June 19, 1972, Colson expressed concern to Dean over the contents of Hunt's safe (p. 2169). [*This seemed strange in that Hunt has testified that Colson's secretary, Joan Hall, had the combination to Hunt's safe. Why not open it with the combination, if he were concerned about it?*]

Dean testified that in a meeting with Ehrlichman and Colson on Monday, June 19, 1972, Ehrlichman told Dean to get Hunt out of the country. (p. 2173) Dean passed along the request. Later in the afternoon in a meeting with Ehrlichman and Colson, Dean testified, the order was rescinded and Dean passed that fact to Liddy; Liddy told Dean that he had already conveyed the earlier request to Hunt. (p. 2173)

Late in the afternoon of June 19, 1972, Colson raised the matter of Hunt's safe. "Colson, without getting specific, said it was imperative that someone get the contents of Hunt's safe. Colson suggested and Ehrlichman concurred that I take custody of the contents of the safe." (p. 2174)

Dean arranged with the Secret Service to drill Hunt's safe on the evening of June 19, 1972.

On June 22, 1972, according to Dean, Colson was interviewed by the FBI. The FBI asked Colson if Hunt had an office in the Exeuctive Office Building, and Colson responded that he thought Hunt had an office in EOB but he did not know where it was located. (p. 2187)

Dean testified that a few days after the Colson interview by the FBI, he Dean, called the FBI and told them he had the materials from Hunt's office and would get them to them shortly. (this would have been about a week after Hunt's safe was drilled open, and the material was carried around in Dean's car) (p. 2187).

Dean testified that in early September 1972, Colson was outraged to learn that he was to be called before the Grand Jury. Dean worked out an arrangement with Henry Petersen whereby Colson would be interviewed out of the presence of the Grand Jury where he would not be subjected to Grand Jurors questions. The same arrangement was made by Petersen for Maurice Stans, Egil Krogh, David Young, Dwight Chapin and Gordon Strachan. [*All of these men were indicted later by other prosecutors for various crimes which were associated with either Watergate or the Ellsberg break in. The prosecutors Petersen and Silbert protected them from grand jurors questions which may have broken the case in September 1972*]

On October 11, 1972, Hunt's lawyer Bittman filed a motion for disclosure of the evidence taken by the government out of Hunt's White House safe. Prosecutor Silbert denied there was any, and said that it was just Hunt's imagination. [*In November 1973, John Dean told prosecutors under Jaworski that during the January 1973 trial he had destroyed an addressbook and list finder of Hunt's. Hunt told the Senate in September 1973 these were a "guidebook" for unraveling Watergate.*]

On November 24, 1972, Hunt called Charles Colson about his plight, telling Colson, among other things,

> "... we are protecting the guys who are really responsible ... and of course that is a continuing requirement, but at the same time, is a two-way street ..." (Book 9, pp. 3695, 3890).

Mrs. Hunt told me, about November 28, 1972, that Hunt had written a letter delivered by Hunt's lawyer, William O. Bittman, to CRP attorney Parkinson "threatening to blow the White House out of the water."

On December 2, 1972, John Mitchell called John Dean and told him to use some of the $350,000 in the White House to take care of Hunt's demands, and to get Haldeman's approval to do so. Dean did. Dean believes that either $40,000 or $70,000 was delivered to CRP by Gordon Strachan.

It is also known that Richard Nixon had dinner with C. G. Rebozo and Colson on December 2, 1972 in Florida. This was the day that payments were delivered to Howard Hunt, shortly after he had dictated a letter taken by

William O. Bittman to the CRP lawyers and read to them, threatening "to blow the White House out of the water," according to statements made to me by Mrs Hunt. Did Colson and the President discuss Hunt in Rebozo's presence?

On December 21, 1972, Dean talked with prosecutors Earl Silbert and Henry Petersen. Dean told Petersen that two envelopes of materials out of Hunt's safe had gone to L. Patrick Gray, secretly. Dean told Petersen that if he were called to testify he would have to reveal that fact (p. 7484-85). Petersen saw to it that Dean was not called to testify. Dean added that the prosecutors had not pursued a request by Hunt's lawyer, Bittman, for exculpatory evidence seized out of Hunt's safe.

In late December 1972, Hunt wrote Colson a letter indicating that he believed he had been abandoned and urged Colson to meet with Hunt's lawyer, Bittman. Hunt testified that through Bittman he learned that Colson would be meeting with Bittman on January 3 or 4, 1973. Among the matters to be discussed, Hunt testified, were the materials seized from Hunt's safe at the White House (Book 9, p. 3697).

Dean received a call, he testified, from CRP lawyer Paul O'Brien on January 2, 1972, stating that "Hunt was off the reservation." Later on January 2, he again talked to O'Brien who said that Hunt wanted to plead guilty but he wanted assurances of Executive clemency first (Book 3, p. 970). O'Brien told Dean the matter had to be resolved promptly and that Hunt would only take an assurance about clemency from Colson.

On January 3, 1973, Dean, Ehrlichman, and Colson met and Ehrlichman said he would talk with the President about Executive clemency for Hunt, Dean testified. On January 4, Dean learned that Ehrlichman had talked with the President and had received an assurance of Executive clemency for Hunt. Later Dean learned that Colson had also talked with the President about the same assurance for Hunt, and Dean said that the President confirmed in two meetings with Dean, that he had discussed with Colson Executive clemency for Hunt. The two dates were March 13 and April 15, 1973. (The date March 13 may have been in error. The date involved may have been March 21, 1973).

On January 8, 1973, my lawyer, Gerald Alch, took me and Bernard Barker to the office of Bittman, Hunt's lawyer. Barker was allegedly going there to receive an assurance of Executive clemency. Alch, in Bittman's office, told me I would hear from a former White House aide about Executive clemency. I did, and refused it.

* * *

In Part I, some of the highlights of my role, and of certain others, in the Watergate case have been reviewed. While these were occurring, there were many other interlocking activities going on in CRP and the White House. Part II contains extracts of sworn Senate testimony, reflecting many of those interrelationships of persons and events, set forth in chronological order from June 30, 1971 to early 1974.

June 29, 1972 (Thursday)

GRAY: On the morning of this date, Gray ordered the cancellation of the interview of Ogarrio, and told his Minneapolis office to make no further efforts to interview Dahlberg. Gray believes that he did so at the request of Dean who had called him at home. Dean had requested that these interviews be held up "because of national security reasons, or because of CIA interest," (in spite of the fact that Helms had repeatedly said there were no CIA interests in Ogarrio or Dahlberg). (p. 7042)

KALMBACH: Dean met Kalmbach at the Hay-Adams Hotel in Washington and both walked to Lafayette Park. Dean told Kalmbach that "we (are asking you) to raise funds for the legal defense of the defendants, and for the support of their families." Dean said Ulasewicz should distribute the money. Kalmbach thereafter called Stans and asked that he make money available to him. Stans brought $75,100 in cash to him. Kalmbach called Ulasewicz in New York, and he came down to Washington on June 30th. Kalmbach gave him instructions on the delivery of the money. (p. 4254)

Kalmbach said that he believed that his own conduct in this was "proper and necessary." (p. 4270) "I had the feeling that someone, in some manner, expressly or by reason of some action, had directed these people to go forward on this (Watergate) assignment . . . (and) there was a feeling that as long as they had been directed to undertake this that there was at least a moral obligation to provide lawyers for them, and for the support of their families . . . but in some manner they (had been) told to go forward (in the Watergate operation)." (p. 4271-72)

June 30, 1972 (Friday)

GRAY: Dean called Gray at San Diego and complained bitterly about leaks from the FBI. Gray believes Dean again raised the subject of not interviewing Ogarrio and Dahlberg. Later in the day, Gray's assistant at the FBI, Mark Felt, called and requested that permission be given to interview David Young, Miss Chenow, John Mitchell and Ogarrio. Gray granted it. (p. 7042)

KALMBACH: He told Ulasewicz that he had a confidential assignment for him to distribute money to the defendants and their lawyers. This distribution continued up until about September 18 or 19, 1972. Kalmbach estimated that about $220,000 of a total of $450,000 was distributed to the defendants. Kalmbach said that after Ehrlichman confirmed Dean's authority and of the propriety of the assignment . . . "that it was for a proper purpose." (p. 4256-62)

Kalmbach stated that he was asked by Dean to distribute money to lawyers Douglas Caddy, Paul O'Brien and to William O. Bittman. [*Ulasewicz testified that Caddy and O'Bruen refused to receive money from him.*]

"WILL PURSUE THE INVESTIGATION THOROUGHLY AND COMPLETELY" AND THAT "THE PRESIDENT WOULD NOT BE GETTING SPECIAL REPORTS ON THIS POLITICALLY SENSITIVE CASE SINCE THAT WOULD BE INAPPROPRIATE," RON ZEIGLER TOLD THE PRESS. (p. 2224)

GRAY: Dean called several times. Gray told Dean the FBI was going to proceed with interviews with Ogarrio and Dahlberg unless there was a request in writing that the FBI not do so. (p. 7044)

HUNT: He met William Bittman for the first time on July 3, 1972, and paid him $1,000 as a retainer. Hunt testified that "some days later Mr. Bittman reported ... he had received a sum of $25,000 as further retainer. He indicated the money had come to him anonymously ... delivered to his office." (Book 9, p. 3693)

July 5, 1972 (Wednesday)

GRAY: Gray called General Walters of the CIA, and told him the FBI planned to proceed with interviews of Ogarrio and Dahlberg, "unless the CIA sent a letter in writing requesting the FBI not to do so."

[*Walters made a memo of this call which reflected that Gray had also talked to Dean that day.*] (p. 7046)

July 6, 1972 (Thursday)

GRAY: He states that he talked with Clark MacGregor at San Clemente, California, conveying to him "that I felt that people on the White House staff were careless and indifferent in their use of the CIA and the FBI," that this activity was injurious to the CIA and the FBI, and that such people were "wounding" the President. Gray asked MacGregor to so inform the President.

[*MacGregor has publicly denied that Gray told him the above information.*]

At 11:28 a.m., the President called Gray. Gray said to him;

"Dick Walters and I feel that people on your staff are trying to mortally wound you by using the CIA and FBI, and by confusing the question of CIA interest in, or not in, people the FBI wishes to interview. I have just talked to Clark MacGregor and asked him to speak to you about this."

"There was a slight pause and the President said 'Pat, you just continue to conduct your aggressive and thorough investigation.' " (p. 7059)

EHRLICHMAN: At San Clemente, California, "we (Nixon and Ehrlichman) talked about CIA." Nixon also saw Clark MacGregor this date, at San Clemente. (p. 5291-96) Ehrlichman met with Kalmbach in California. (p. 4337)

and Dean present. The accountings were listed on a small sheet of paper, and burned in an ash tray. Kalmbach turned over $30,000 to La Rue, and told him and Dean that he wanted to "get out." (p. 4606)

September 26, 1972 (Tuesday)

DEAN: ". . . On September 26, I received a report I had requested from Kenneth Parkinson after he had one of his associates check the reports of the members of the Banking and Currency Committee" . . . filed on the campaign contributions of that committee's members with the Clerk of the House. (Exhibit 34-21) (p. 2238)

Latter part of September 1972

LA RUE: ". . . I think that the first discussion I had with Mr. Parkinson regarding the money for defendants would have been . . . in the latter part of September or October (1972)." (p. 4603)

La Rue delivered $25,000 to William O. Bittman as a result of a conversation Parkinson had with Bittman. This request for money was relayed to Dean, citing the need for attorney's fees for Bittman carrying out committments made by people who had something to do with authorizing the original activity. (p. 4608-10)

October 2, 1972 (Monday)

The Patman Committee

DEAN: Congressman Wright Patman made public his list of witnesses to be called for testimony on Watergate. Some of the persons on that list had knowledge of Watergate (or the cover up), including Baldwin, Caulfield, Magruder, Mardian, Mitchell, Porter, Stans, and Dean. Dean began receiving increasing pressure from Mitchell, Stans, Parkinson and others to get the Justice Department to respond to the September 8 letter of Congressman Brown as a vehicle Brown could use in persuading other Republicans not to vote in favor of subpoenas. (p. 2238-40)

Dean had earlier sought such help from Henry Petersen, who refused. After the indictments were issued, Petersen said, "he did feel that the Justice Department should issue such a letter because of the potential implications of the breadth of the Patman hearings." Petersen sent such a letter on October 2, 1972. (Exhibit 34-23) (p. 2240)

William Timmons, White House congressional chief, worked on the Republican congressmen and members of the southern delegation. Dean said that Mitchell "reported to me that he had been working with some people in New York to get the New Yorkers to vote against the hearings . . . he had assurances that they would either not show up or would vote against the hearings . . ." (p. 2241)

The hearings were killed on October 3, 1972, by a vote of 20 to 15 "and another sigh of relief was made at the White House that we had leaped one more hurdle in the continuing cover up." (p. 2241)

PRESIDENT NIXON HELD A PRESS CONFERENCE REGARDING WATERGATE, CITING THE FBI STATISTICS ON THE VAST NUMBERS OF PEOPLE WHO HAD BEEN INTERVIEWED. (p. 5764)

October 4, 1972 (Wednesday)

DEAN: Congressman Wright Patman requested a Government Accounting Office (GAO) investigation regarding the campaign funding within CRP and FCRP. (p. 2241)

October 11, 1972 (Wednesday)

[On this date McCord, Hunt and Liddy filed legal motions including the following:

1. One by Hunt, asserting that his Room 338, Executive Office Building, had been entered and searched without a search warrant and addressbooks taken. Subsequently, Prosecutor Silbert denied this. (Hunt's allegations were proven true in November 1973, when John Dean admitted having destroyed, by shredding, addressbooks of Hunt's, stored in the "Estate Planning File of the President of the United States," in late January 1973).

2. McCord and Hunt asserted wiretapping of their own phones, and an affidavit of Hunt's asserted that voices had been heard September 22, 1972, on his line while he was talking with Bittman, his lawyer. The voices stated "that's Bittman." Hunt said that no one was on his telephone extensions in his home, at the time. Prosecutor Silbert denied that any wiretapping had occurred, in a response filed October 24, 1972.

3. Liddy and McCord asserted evidence of physical surveillance by automobile during September 1972, and on October 10, 1972, in the case of Liddy. The prosecutors subsequently denied that any surveillance had occurred.

Details of all of these allegations are reported in The Washington Star *of October 12, 1972, page A-14, in a column by reporter Barry Kalb).]*

October 15, 1972 (Sunday)

DEAN: He was called back to his office from Florida to handle cascading news leaks regarding Chapin, Strachan, Kalmbach, and later Haldeman, "which was creating a frenzy in the White House . . ."

Ehrlichman suggested to him that he advise Segretti to "go incognito" in order to hide from the press. Segretti did so for a period of time. (p. 2249)

Dean said that he told Segretti in Florida that he doubted that the Grand Jury would ask about Kalmbach, Strachan and Chapin, but if so, he was to answer truthfully. "... I later learned from Segretti that the names had come out during the Grand Jury appearance ... (and) I had a discussion later with Henry Petersen ... in which he told me that Mr. Silbert had tried to avoid getting into this area, and in fact did not ask him the question which resulted in his giving the names, rather that a grand juror had asked the question, despite the fact that the prosecutors had tried to gloss over it." (p. 2246.

Continuing, Dean said, "I had ... learned by this time ... that Haldeman, in a meeting with Kalmbach, had (originally) approved Segretti's activities and authorized Kalmbach to make the payments to Segretti." "Strachan came into my office ... and said that he would, if necessary, perjure himself to prevent involving Haldeman in this matter." (p. 2247)

October 18, 1972 (Wednesday)

GRAY: Helms of CIA visited Gray this date, "as a courtesy before going to see the Attorney General." He told Gray that one of his lawyers had met with Silbert the previous week, and told Gray that the CIA was "to provide documented answers to questions of Silbert."

October 24, 1972 (Tuesday)

KLEINDIENST: He met with CIA Director Helms who turned over certain CIA records to him. Petersen was also present. (p. 7444)

PETERSEN: He recalls getting certain documents from Kleindienst, coming from the CIA. "They included a series of photographs attached to 'the package.'" Petersen obtained them at Kleindienst's office. "Silbert subsequently came over and he (and Petersen) went over the documents, studied the photographs and (we) couldn't make any sense of them at all." (p. 7479-80)

Late October 1972

[Henry Petersen, in an affidavit, says photos of an individual standing in front of Dr. Fielding's office building, in California, were given by CIA to Petersen in October 1972. (The photos were of Liddy standing in front of Dr. Fielding's name plate on his office. Did the Justice Department make any effort to determine what Liddy was doing in front of Ellsberg's psychiatrist's office? It would appear that by this time they knew what Liddy looked like.]

EHRLICHMAN: Dean told Ehrlichman in November 1972, that Petersen and Silbert had the information and photographs regarding the Ellsberg break-in. (p. 5255)

Before Election Day, November 7, 1972

DEAN: Paul O'Brien reported that William O. Bittman, Hunt's lawyer, had

Late November 1972

DEAN: Haldeman talked to him and asked what would happen if the facts regarding the Segretti activities were disclosed by the White House to the press. Dean replied that it was likely that the pending Watergate trial would be put back before the Grand Jury, and that "it was very likely that Mitchell, Magruder, Strachan, Ehrlichman, Haldeman, and Dean could be indicted . . . (and) the Grand Jury could get into the question of obstruction of justice which would lead right to us." (p. 2253)

November 24, 1972

HUNT: He called Charles Colson about his plight. He told Colson, among other things,

". . . we are protecting the guys who are really responsible . . . and of course that is a continuing requirement, but at the same time, is a two-way street . . ." (Book 9, pp. 3695, 3890)

[*On November 28, 1972, Earl Silbert interviewed Dwight Chapin and Gordon Strachan. (p. 2462)*]

December 2, 1972 (Saturday)

DEAN: The President had dinner at Key Biscayne with Charles Colson and C. G. Rebozo on this date, according to Dean.

DEAN: Mitchell called Dean and told him to use some of the $350,000 to take care of Hunt's demands, and asked him to get Haldeman's approval. "Prior to Mitchell's call, Colson's secretary said that Mrs. Hunt had called her at home on several occasions to discuss the problem with her, in order that she (the secretary) might pass it to Colson and get something done about it." Colson sent Miss Joan Hall, his secretary, to see Dean concerning these messages.

Haldeman approved use of the money and told him to tell Strachan to deliver the money to the Committee (CRP). Dean believed that either $40,000 or $70,000 was delivered to CRP by Strachan. This did not satisfy Hunt's demands, Dean said, according to information relayed by William O. Bittman, Hunt's attorney, to Paul O'Brien. O'Brien, in turn, relayed it to Mitchell, La Rue and Dean. Dean, in turn, told Haldeman and Ehrlichman of the requests from Hunt. (p. 2262-64)

Finally, Haldeman said to deliver all of the $350,000 to CRP, but get a receipt. Strachan delivered the money to La Rue, but La Rue refused to give a receipt for it. (p. 2264)

December 5, 1972 (Tuesday)

DEAN: He reluctantly gave Haldeman a carefully-worded report, an interrogatory on the Watergate Case, and on Segretti. (Exhibit 34-25) Haldeman gave it to Ehrlichman who made editorial changes, and he gave the report to Ron Zeigler. A meeting was subsequently held in Haldeman's office on December 13, 1972, and subsequently in Zeigler's office regarding the interrogatory. Present were Moore, Zeigler, Dean, Haldeman and Ehrlichman. "Nothing was resolved ... and it was a consensus of the group (except Ehrlichman who had to leave) that the White House should continue, in Richard Moore's words, to 'hunker down,' do nothing, on the general theory that no one would be arrested for what they didn't say (publicly on the Watergate Case)." (p. 2254-55)

December 1972

LA RUE: La Rue, in December, received from Strachan a $50,000 amount from a $350,000 cache of money in the White House. (p. 4613) A $50,000 payment was made to Bittman, as a result of a meeting in Dean's office, in which Parkinson relayed a conversation with Bittman regarding cash needs for the defendants of which $50,000 was a partial payment on the amount of money needed for the trial. (p. 4610)

December 4, 1972 (Monday)

[*Judge Sirica held a meeting with the defense and prosecuting attorneys this date, and stated that the jury would want to resolve during the trial in January 1973, who authorized the Watergate operation, how it was funded, who recruited the four Miami men, and the answers to a number of other questions.*]

December 21, 1972 (Thursday)

DEAN: He told Petersen that he had given certain items from Hunt's White House safe to Gray in June 1972, during an all-afternoon interview of Dean, Fred Fielding and Bruce Kehrli. (p. 7484-85) He testified,

"... shortly before the criminal Watergate trial in January (1973) ... (Fred) Fielding, (Bruce) Kehrli, and I were being interviewed by the prosecutors regarding the handling of the materials in Hunt's safe (at the White House) to establish the evidentiary chain. At one point in the interview, I asked Henry Petersen, who was present with ... Silbert, if I could speak to him privately. At that time I felt I had to tell Petersen that not all the materials from Hunt's safe had gone directly to the agents, rather that two envelopes of material, the contents of which I could not itemize any better then than I can now, had been given directly to Gray. I told Petersen that if I were to testify I would have to reveal this fact.

"Mr. Petersen suggested that the interview be terminated, which it was, and they would get back to me . . . I was not called again."

Dean added that an earlier motion by William O. Bittman, Hunt's attorney, for discovery of excalpatory evidence seized out of Hunt's safe by the FBI, "had not been pursued by the prosecutors." (p. 2210)

PETERSEN: "During . . . Gray's confirmation hearings (March 1973) he (Gray) . . . called me . . . and in the course of that conversation, I had asked him very casually if he had ever received documents from John Dean from Hunt's safe or office which were not given to the (FBI) agents and he said **no."**

". . . On or about April 15 . . . he (Dean) related this (the document story) to them (the prosecutors) and Silbert asked me about it and I . . . told him I had asked Pat Gray and . . . Gray said no (that he had not taken any documents of Hunt's from Dean)." (p. 7486)

[Gray later testified that he actually had burned Hunt's documents, referred to above, over the Christmas 1972 holidays.]

DEAN: He talked with Gray shortly after this meeting in Petersen's office, where these facts were disclosed to Petersen. Gray told Dean to "hang tight" and not disclose receipt of the documents. He also "informed me that he had destroyed the documents."

"I told Ehrlichman about this shortly after Gray told me he had destroyed the documents." (p. 2210)

PETERSEN: He states that he asked Dean whether the documents of Hunt's given to Gray were related to Watergate, and Dean said they were not. Petersen said he told Dean,

"More than that, John, I am willing to take your word that they are not related to Watergate, but defense counsel is not going to be. Now if you are asked that question, those documents are going to have to be produced, and you had better talk to Pat Gray about it, and he said he would." (p. 7485)

Petersen said he went off on a Christmas holiday and later "with the acceptance of the plea, the motion to suppress was not pressed, and of course I guess I just no longer had in the forefront of my mind those documents or that question with respect to those notebooks." (p. 7485)

[Dean was not called by the Prosecutors to testify during the January trial, nor is there any indication that they made available to defense counsel, the judge, or jury, the information Dean had given Petersen about Hunt's files secretly going to Gray in June 1972.]

December 1972

A "CIA Defense"

MAGRUDER: "... in these series of meetings we had (from June 17th) ... to September (1972) that defense (a CIA defense) was discussed in general terms ... (with John Mitchell and others)." (p. 1927)

December 21 and 26, 1972

McCORD: On May 4, 1973, McCord furnished to Federal Prosecutor Earl Silbert for the Federal Grand Jury, and to the Senate Watergate Committee the following sworn statement:

SUBJECT: PRESSURE ON THE DEFENDANTS TO BLAME THE WATERGATE OPERATION ON CIA: AND OTHER MATTERS

... In two separate meetings in December 1972, it was suggested that I use as my defense during the trial the false story that the operation was a CIA operation. I refused to do so.

I was subsequently informed by Bernard Barker just before the trial began in January 1973, that E. Howard Hunt and other unnamed persons in Miami had brought intense pressure to bear against the Cuban-Americans who were defendants, to use the same story as their defense, that my stand taken against it had been the decisive factor causing this ploy to be dropped, and that Hunt was very bitter about it. Hunt's bitterness was later revealed early in the trial when the Cubans advised that Hunt had said that I was responsible for our being in the plight we were in for not going along with the CIA thing.

At a later time, I heard from Barker that he had been told that Cuban money was suspected of being funnelled into the McGovern Campaign. I have no knowledge that this suspicion was ever verified.

The two December 1972 meetings with me were on December 21, 1972, and on December 26, 1972. Present at the first meeting with me at the Monocle Restaurant in Washington, D.C., were Gerald Alch and Bernard Shankman, my attorneys. Present at the second meeting was Gerald Alch, and the meeting was at his offices in Boston, Massachusetts.

In the first meeting, Alch stated that he had just come from a meeting with William O. Bittman, attorney for E. Howard Hunt, and I received the impression in the discussion that followed that Alch was conveying an idea or request from Bittman. There followed a suggestion from Alch that I use as my defense during the trial the story that the Watergate operation was a CIA operation. I heard him out on the suggestion which included questions as to whether I could ostensibly have been recalled from retirement from

convinced that the ploy to lay the operation at CIA's doorstep had been headed off, and agreed to give him a second chance.

By this time, I was also convinced that the White House had fired Helms in order to put its own man in control at CIA, but as well to lay the foundation for claiming that the Watergate operation was a CIA operation, and now to be able to claim that 'Helms had been fired for it.' There had been indications as early as July that the Committee for the Re-election of the President was claiming that the Watergate operation was a CIA operation. Mrs. Hunt had told me in late July 1972, that Paul O'Brien had told Howard Hunt in July that the Committee to Re-elect the President had originally informed him that the Watergate operation was a CIA operation. Mrs. Hunt said that her husband had denied to O'Brien that it was a CIA operation. By early December 1972, it appeared that the White House was beginning to make its move. The events of December 21 and December 26, 1972, only confirmed this in my mind.

Further, based on an earlier discussion with Robert Mardian in May, 1972, it appeared to me that the White House had for, some time been trying to get political control over the CIA assesments and estimates, in order to make them conform to "White House policy." . . .

". . . E. Howard Hunt has additional information relevant to the above. Hunt stated to me on more than one occasion in the latter part of 1972, that he, Hunt, had information in his possession which "would be sufficient to impeach the President." In addition, Mrs. E. Howard Hunt, on or about November 30, 1972, in a personal conversation with me, stated that E. Howard Hunt had just recently dictated a 3-page letter which Hunt's attorney, William O. Bittman, had read to Kenneth Parkinson, the attorney for the Committee to Re-Elect the President, in which letter, Hunt purportedly threatened 'to blow the White House out of the water.' Mrs. Hunt at this point in her conversation with me, also repeated the statement which she, too, had made before, which was that E. Howard Hunt had information which could impeach the President. . . ."

HUNT: He wrote a letter dated this date (Book 9, p. 3892, exhibit 153) to Charles Colson, which read, in part,

> "the imminent trial . . . my inability to get any relief from my present situation . . . all contribute to a sense of abandonment from my friends on whom I had in good faith relied. I can't tell you how important it is, under the circumstances, for Bill Bittman to have the opportunity to meet with you, and I trust you will do me that favor. There is a limit to the endurance of any man trapped in a hostile situation . . ." (Book 9, p. 3892)

Hunt has testified that through William Bittman, his lawyer, he learned that Colson would be meeting with Bittman on January 3 or 4, 1973. Among the

things that Bittman was to discuss was the motion regarding the evidence seized from Hunt's safe at the White House by John Dean. (Book 9, p. 3697)

January 1, 1973 (Monday)

[The events of the week preceeding the first Watergate trial, which began January 8, 1973, were highly significant because of the White House and CRP efforts to get all the defendants to keep silent, preferably by pleading guilty.]

January 3, 1973 (Wednesday)

PETERSEN: Chief Counsel Dash asked Petersen, during the Senate hearings, if he recalled receiving some xerox copies of photographs from CIA on January 3, 1972, and other material on October 24, 1972. Dash showed Petersen a copy of a memorandum dated December 5, 1972, and attached to it were xerox copies of photographs. Petersen recognized some of the photos including pictures of Liddy and one photo containing a marking "reserved Dr. Fielding" and another "reserved Dr. Rothberg." Petersen said he and Silbert couldn't make anything out of the photos, and asked CIA if "they didn't have any descriptive data or negatives or actual photographs or anything that would assist us." Petersen said he did not know who Fielding was, and had no knowledge of the Ellsberg case. Petersen said that they didn't relate the documents to the Ellsberg case until the time of "Mr. Krogh's affidavit in connection with the Ellsberg matter." (p. 7479-83) *[CIA actually gave Petersen a memorandum on January 3, 1973 identifing the license plate on a photo as Dr. Fieldings. Petersen did nothing with this information.]*

EHRLICHMAN: There was a meeting at noon between John Ehrlichman, John Dean and Charles Colson regarding Hunt.

At 7:00 p.m., Ehrlichman met with Colson and Dean regarding a letter Colson had received from Howard Hunt. Colson proposed that Dean get together with Hunt, or Hunt's attorney. But it was agreed, instead, that Colson would talk with William O. Bittman, Hunt's attorney, and Bittman would convey to Hunt, Colson's assurances of "personal support."

Ehrlichman told Dean and Colson of a previous discussion with President Nixon in July, 1972, regarding the topic of Executive clemency in which President Nixon told Ehrlichman that no one from the White House was to get into the area of Executive clemency with anyone involved in the case, and "surely not to make any assurances to anyone." (p. 5419-21)

McCORD: This is the date Judge Sirica called a meeting on my having fired Alch (because he had tried to get me to use a false defense at the trial, i.e., the defense that "CIA was behind the Watergate operation." I had refused to do so.) We agreed to give it one further try with Alch as my defense attorney.

January 4, 1973 (Thursday)

DEAN: Liddy called Krogh's secretary about a letter from the Senate Commerce Committee regarding Liddy's relationship with Krogh. Dean and Krogh conferred and gave Liddy a response through the secretary, so that Krogh would not have to talk directly to him while Krogh's Department of Transportation appointment was pending before the Senate. (p. 2277-78)

EHRLICHMAN: He met with Nixon and Haldeman from 3:02 p.m. to 5:15 p.m. and Henry Kissinger was there for about 45 minutes. Ehrlichman states he cannot recall discussing Watergate or Executive clemency during this meeting.

Ehrlichman also met with Attorney General Kleindienst on this date. (p. 5422-24)

Early January 1973

DEAN: After Mrs. Hunt's death on December 8, 1972, Paul O'Brien said that Bittman thought the government might be of assistance in helping Hunt by finding a sympathetic psychiatrist to examine Hunt, and who would concur in a finding of the psychiatrist who already had examined Hunt and found him not fit to stand trial. At Mitchell's request, Dean called Henry Petersen to ask his help, and was told, "if there was anything which could be done, it would be, but he did not think that anything could be done in the matter." (p. 2266)

[*Alch gave me similar information about Hunt, almost word-for-word, during the first week of the trial. Where he obtained his information, I do not know.*]

January 5-6, 1973

DEAN: CRP attorney Paul O'Brien reported to Dean that Liddy was "miffed" because Krogh was unwilling to speak to him. At Krogh's request, Dean called Liddy at home. (p. 2279)

[*Paul O'Brien had no legal counsel relationship to Liddy.*]

After Senator Mansfield sent letters to Senator Eastland and Senator Ervin regarding the holding of Watergate hearings, "Wally Johnson and Fred LaRue informed me that they had talked with Senator Eastland. The White House wanted Senator Eastland to hold such hearings because they felt Senator Eastland would be more friendly and . . . the White House had more friends on the Judiciary Committee than on Senator Ervin's Government Operations Committee." (p. 2287)

January 3-8, 1973

DEAN: ". . . I was out of my office from roughly December 22 until the morning of January 3 . . . I received a call on the morning of January 2 while awaiting takeoff from California in the President's new Air Force One. The call was from Paul O'Brien, who told me that there were some serious problems and I should speak with him as soon as I returned to Washington. He told me that Mr. Hunt was off the reservation. I was traveling with Haldeman and told him about the call.

When I arrived in Washington that evening, I called O'Brien and he told me that Hunt was quite upset and wished to plead guilty but before he did so he wanted some assurances from the White House that he would receive Executive clemency. O'Brien told me that Hunt would only take the assurances from Colson and that Bittman had been trying to reach Colson. I told O'Brien that I doubted if Colson would be willing to give any such assurance because he was staying at more than arm's length from Hunt . . ."

"On the morning of January 3, I received another call from Mr. O'Brien saying that the matter had to be resolved immediately because he had talked to Bittman, and they had been trying to get hold of Colson without any success. Colson called me to tell me that Bittman was trying to reach him and asked me if I had seen the letter that Hunt had sent him . . ."

". . . I found in my mail a memorandum from Colson with a letter attached from Hunt in which he was desperately pleading to have Colson meet with his attorney, Mr. Bittman. I told Colson that I was aware of the fact that Bittman wanted to discuss the matter of Executive clemency for Hunt and that Hunt would only take assurances from him — Colson. As I recall, Colson said that he did not want to meet with Mr. Bittman but he would do whatever I suggested. I told him I would get back in touch with him.

"I next met with Ehrlichman and told him about the situation and he thought that Colson should meet with Bittman. I do not believe Colson was present when I first discussed this with Ehrlichman. I informed Colson that Ehrlichman thought he should meet with Bittman.

"In trying to reconstruct as best as I recall what occurred, there was a meeting in Ehrlichman's office on January 3, after Mr. Colson had had a conversation with Bittman about Hunt's potential for Executive clemency. I recall that when Colson came to the meeting with Ehrlichman he was extremely shaken, which was unlike Colson. He was not specific in his arguments to Ehrlichman but he said that he felt it was imperative that Hunt be given some assurances of Executive clemency.

"The meeting in Ehrlichman's office did not last long and Ehrlichman said that he would have to speak with the President. Ehrlichman told Colson that he should not talk with the President about this. On January 4, I learned

from Ehrlichman that he had given Colson an affirmative regarding clemency for Hunt and that Colson had talked with Bittman again about the matter. There was another meeting on this subject on January 5, in Ehrlichman's office, in which Colson explained exactly what he had told Bittman regarding clemency. He said that he had told Bittman that he could not give a specific commitment but he gave him a general assurance. He also said that he told him that clemency generally came up around Christmas and that a year was a long time. It was as this meeting was ending that I said to Ehrlichman that this will obviously affect all of the others involved as the word will spread, and can I assume that the same commitment extends to all? He said that no one could be given a specific commitment but obviously, if Hunt was going to get an assurance for clemency the others could understand that it applied to all.

"After the meeting in Ehrlichman's office, Colson told me that although Ehrlichman had told him that he (Colson) should not discuss this matter with the President, that he, in fact, thought it was so important that he had taken it up with the President himself. I also learned shortly thereafter, as a result of a telephone call from O'Brien, that Bittman had informed O'Brien that Hunt was satisfied with Colson's assurances.

"As I shall state later, the President himself raised this subject on two occasions with me, and told me that he had discussed the matter of Executive clemency for Hunt with both Ehrlichman and Colson. The President raised this with me on March 13, 1973, and April 15, 1973.

"While I was in California during the late December/early January 1973, as I referred to a moment ago, I received a call from Mr. Fielding who told me that Jack Caulfield had received a letter from McCord. Fielding was not explicit regarding the contents of the letter, and said that he had taken down the letter and that I could read it when I returned in the next day or so to the office. I have submitted a copy of the letter transcribed by Fielding to the committee.

McCORD: LETTER TO JOHN CAULFIELD

"Dear Jack:

I am sorry to have to write you this letter. If Helms goes and the Watergate operation is laid at the feet of CIA where it does not belong, every tree in the forest will fall. It will be a scorched desert. The whole matter is at the precipice right now. Pass the message that if they want it to blow they are on exactly the right course. I am sorry you will get hurt in the fallout." (Book 1, p. 196)

DEAN: ". . . between January 3 and 5, Mr. Caulfield came to my office with the original letter. I do not know what I did with the original, but I believe I gave it to Paul O'Brien. I know that O'Brien and I discussed the matter, because he told me that McCord was not cooperating with his lawyer — Mr.

Alch. O'Brien also told me that Bittman had planned a CIA defense to the case, but McCord, who initially had been willing to go along, later refused.

"O'Brien subsequently talked with Mitchell about the matter, because Mitchell called me and informed me that he had discussed the matter with O'Brien, and Mitchell asked me to request that Jack Caulfield talk with McCord to find out what he was going to do. I told Mitchell I would ask Caulfield to speak with McCord. When I later tried to reach Caulfield he had gone to California for a drug conference. I later informed Mitchell that Caulfield was out of town." (Book 3, p. 973-74)

January 7, 1973 (Sunday)

[I saw Bernard Barker in Washington at the Sheraton-Carlton Hotel. He told me that Hunt was going to plead guilty. Barker stated that "this was alright for Hunt, because he had received an assurance from the White House that he would receive Executive clemency, and that Hunt had the clout to insure that he would get it." Barker felt that he personally needed more assurance than word, third-hand, through Hunt, that the four Miami defendants would also receive it.]

January 8-10, 1973

DEAN: "It was on January 10 that I received calls from both O'Brien and Mitchell indicating that since Hunt had been given assurance of clemency and that those assurances were being passed by Hunt to the others, that Caulfield should give the same assurances to McCord, who was becoming an increasing problem and again I was told that McCord's lawyer was having problems with him. Both O'Brien and Mitchell felt that McCord might be responsive to an assurance from Caulfield, because Hunt, Bittman, and his lawyer, Alch, had lost rapport with him. I told Mitchell I would do so.

"Based on the earlier conversation I had with Ehrlichman on January 5 that the clemency assurance that had been given to Hunt would also apply to the others, and Colson's description of how he had given Bittman a general assurance, without being specific as to the commitment, I called Caulfield later that day to request that he get in touch with McCord. Caulfield told me that it would be very difficult, because he was going to be in California for several more days. Caulfield indicated that it would be easier for Mr. Ulasewicz rather than himself to talk with McCord . . . I said fine, and then gave him the clemency message similar to the message that Colson had transmitted to Hunt via Bittman. Caulfield wrote down the gist of the message, he repeated his notes back, and I said that was fine . . . Caulfield said he would have the message delivered right away. (Book 3, p. 975)

January 8, 1973 (Monday)

[During the morning of January 8, 1973, my defense attorney, Gerald Alch, told me that the "prosecutors want a 'package deal' on pleas of guilty from

all the defendants, and they are not going to consider the pleas, unless all plead guilty." Alch went on to say, "Jim, I don't have any defense for you."

The impact of what Alch was saying was that I should "get in on the package deal," by pleading guilty, because he didn't have a defense.

In the afternoon, Alch took me to the offices of William O. Bittman, Hunt's attorney, where, after conferring privately with Bittman, he told me that I would be getting a call that evening from someone in the White House whom I had known. That night I received a call, and was urged by a man who was later identified as Anthony Ulasewicz, to plead guilty, in exchange for which I would receive Executive clemency, money while in prison, and a job after my release. The call from Ulasewicz was the beginning of an involved series of talks with him and John Caulfield, who attempted to get me to plead guilty and otherwise keep silent. My sworn statement on this matter was made before the Senate Watergate Committee on May 18, 1973.]

McCORD: Political pressure from the White House was conveyed to me in January, 1973, by John Caulfield to remain silent, take Executive clemency by going off to prison quietly and I was told that while there I would receive financial aid and later rehabilitation and a job. I was further told in a January meeting in 1973 with Caulfield that the President of the United States was aware of our meeting, that the results of the meeting would be conveyed to the President, and that at a future meeting there would likely be a personal message from the President himself. The dates of the telephone calls set forth below are the correct dates to the best of my recollection.

On the afternoon of January 8, 1973, the first day of the Watergate trial, Gerald Alch, my attorney, told me that William O. Bittman, attorney for E. Howard Hunt wanted to meet with me at Bittman's office that afternoon. When I asked why, Alch said that Bittman wanted to talk with me about "whose word I would trust regarding a White House offer of Executive clemency." Alch added that Bittman wanted to talk with both Bernard Barker and me that afternoon.

I had no intention of accepting Executive clemency, but I did want to find out what was going on, and by whom, and exactly what the White House was doing now. A few days before, the White House had tried to lay the Watergate operation off on CIA, and now it was clear that I was going to have to find out what was up now. To do so involved some risks. To fail to do so was, in my opinion, to work in a vacuum regarding White House intentions and plans, which involved even greater risks, I felt.

Around 4:30 p.m. that afternoon, January 8th, while waiting for a taxi after the court session, Bernard Barker asked my attorneys and me if he could ride in the cab with us to Bittman's office which we agreed to. There he got out of the cab and went up towards Bittman's office. I had been under the impression during the cab ride that Bittman was going to talk to both

Barker and me jointly, and became angered at what seemed to me to be the arrogance and audacity of another man's lawyer calling in two other lawyers' clients and pitching them for the White House. Alch saw my anger and took me aside for about a half-hour after the cab arrived in front of Bittman's office, and let Barker go up alone. About 5:00 p.m. we went up to Bittman's office. There Alch disappeared with Bittman, and I sat alone in Bittman's office for a period of time, became irritated, and went next door where Bernard Shankman and Austin Mittler, attorneys for me and Hunt respectively, were talking about legitimate legal matters. Alch finally came back, took me aside and said that Bittman told him I would be called that same night by a friend I had known from the White House. I assumed this would be John Caulfield who had originally recruited me for the Committee to Re-Elect the President position.

About 12:30 p.m. that same evening, I received a call from an unidentified individual who said that Caulfield was out of town, and asked me to go to a pay phone booth near the Blue Fountain Inn on Route 355 near my residence, where he had a message for me from Caulfield. There the same individual called and read the following message:

> "Plead guilty. One year is a long time. You will get Executive clemency. Your family will be taken care of and when you get out you will be rehabilitated and a job will be found for you. Don't take immunity when called before the Grand Jury."

The same message was once again repeated, obviously read. I told the caller I would not discuss such matters over the phone. He said that Caulfield was out of town.

On Wednesday evening, January 10, the same party called and told me by phone that Jack would want to talk with me by phone on Thursday night, January 11, when he got back into town, and requested that I go to the same phone booth on Route 355 near the Blue Fountain Inn. He also conveyed instructions regarding meeting Caulfield on Friday night, January 12. (Book 1, p. 132-41)

January 11, 1973 (Thursday)

DEAN: "On January 11, I received a call from O'Brien, who asked me if the message had been delivered by Caulfield. I told him that it had. O'Brien told me that McCord wanted to speak with Caulfield personally and asked me when Caulfield could meet with McCord. I told him I would try to arrange it. . . . He told me he was keeping Mitchell posted and requested I keep him posted. O'Brien said that we need a firsthand report, a firsthand reading on McCord from someone he will talk with, because he is not talking openly with his lawyer about what he plans to do. . . ."

"I called Caulfield on January 11 and told him that McCord wanted to meet with him and asked him if he would do so and take McCord's pulse as to

brought pressure to bear upon the four Miami men to use a false defense that CIA was behind operation. Barker told me that that plan was dropped when I refused to go along with it (after being pitched twice by my attorney Gerald Alch to use it.)]

[*Anthony Ulasewicz, responding to a question of Senator Inouye, admitted that in contacting McCord in January 1973 he was being an accessory to the crime of obstructing justice.*] (Book 1, p. 291)

January 19, 1973 (Friday)

LA RUE: A meeting occurred in John Mitchell's office, with Dean and Kalmbach present, to try to get Kalmbach to raise defense money. Kalmbach refused.

In January, La Rue had received $280,000 from Gordon Strachan, out of which $20,000 was paid to Peter Maroulis, Liddy's attorney. He also arranged two other payments out of it, one for $25,000 and another for $35,000, to Bittman at Bittman's home. (p. 4613-14)

Late January 1973

[*On November 5, 1973, Dean advised the prosecutors that in late January he had "found in a Presidential file, the 'Estate Planning file of the President of the United States,' an addressbook and a telephone list finder belonging to Hunt." He claimed that he shredded the addressbook and put the list finder in wastebasket.*]

February, 1973

PETERSEN: He talked with Kleindienst, who told him he had just come from a luncheon with Dean and Ehrlichman and they had raised the question to Kleindienst of whether or not leniency could be accorded the seven Watergate defendants. Petersen said that he said "no" that they were going to recommend "jail time" for them. Petersen called Dean, and passed that information along. [*Kleindienst testified that the word used by the White House aides during the luncheon was "Executive Pardon" for the defendants.*]

February 5, 1973 (Monday)

DEAN: Senator Ervin introduced his resolution to create the Senate Watergate Committee. "... I later had discussions with Haldeman and Ehrlichman ... and they felt that it was time to develop a strategy for dealing with the Senate situation. I received what I interpreted as a mild criticism that I wasn't getting the White House prepared for the forthcoming hearings, and it was recognized that we were fast moving into an uncontrollable if not hostile forum."

"The meeting was almost exclusively on the subject of how the White House should posture itself vis-a-vis the Ervin Committee hearings. There was absolutely no indication of any changed attitude and it was like one of many, many meetings I had been in before, in which the talk was of strategies for dealing with the hearings rather than any effort to get the truth out as to what had happened both before June 17th and after June 17th.

"Following this meeting with the President, it was apparent to me that I had failed in turning the President around on this subject, but Ehrlichman and Haldeman began taking over with regard to dealing with a new problem, which had become John Dean, as they were aware of the fact that I was very unhappy about the situation." (p. 2335-40)

[March 21, 1973, is the date Richard Nixon stated that he opened his own investigation about Watergate based on "newly-discovered evidence." Presumably that evidence was my letter delivered the day before to Judge John Sirica.]

EHRLICHMAN: From 3:45 p.m. to 6:00 p.m., Haldeman, Dean and Ehrlichman met either in Ehrlichman's or Haldeman's office. Ehrlichman says he cannot recall which. (p. 5709) "The meeting moved to the President's office after about an hour." Ehrlichman said they talked about the Executive privilege issue with the Senate, and Dean talked about the law of attorney-client privilege. "Dean and I got into a difference of opinion at that time about immunity and how it should be handled." (p. 5711) Ehrlichman went on to say, "He (Dean) was concerned that people would not talk freely (to a Federal Grand Jury)." Dean believed that immunity should be arranged for the White House staffers. Senator Gurney questioned Ehrlichman on this subject:

Senator Gurney: "If everybody was ignorant of everything and it stopped with Liddy, why would people worry about immunity?"

Ehrlichman: ". . . Dean was implying that people in the White House would not come forward and testify freely without immunity." (p. 5712)

[March 21st was the date when Dean and Nixon discussed cover up money for the defendants, according to Haldeman, and the sum of $1 million was mentioned. Dean said that the costs might run that high and Nixon responded that raising the amount was no problem. Where Dean and Haldeman's testimony differs is in the phrase which did or did not follow. According to Haldeman Nixon added "We can do that but it would be wrong." Dean states the President did not add that phrase. (Book 3, p. 995; Book 7, p. 2897)]

March, 1973

LA RUE: He paid Bittman, attorney for Hunt, $75,000 as a result of a call from Dean who had talked to Paul O'Brien, who in turn said Bittman needed

the money for attorney's fees. "Mitchell approved it, this was just shortly before Hunt was sentenced on March 23, 1973." (p. 4617-19)

March 22, 1973 (Thursday)

Richard Nixon traveled to Key Biscayne Florida this date.

HUNT: He testified that he had met with Paul O'Brien, CRP attorney in William O. Bittman's law firm office. Hunt knew O'Brien was Bittman's contact at CRP in connection with the payment of legal fees for Hunt by CRP.

Hunt discussed $60,000 in legal fees and told O'Brien he had engaged in "seamy activities for the White House and asked for priority consideration" for his financial needs.

Hunt said O'Brien told him that he "was finding himself increasingly ineffective as a go-between." O'Brien told Hunt "he recognized that assurances had been given, that to some extent they had in the past had been carried out, but he felt he was becoming less and less effective as an intermediary." O'Brien "suggested that I (write) . . . a strongly worded memorandum . . . to Mr. Colson." (Book 9, p. 3705)

March 23, 1973 (Friday)

[*Alch, my attorney, told me while in Judge Sirica's court, that morning, that Paul O'Brien was in the courtroom, I had never seen him before that morning.*]

DEAN: "Sirica read McCord's letter in open court. O'Brien gave me the high points of the letter as they had been reported to him by someone from the courthouse. He also told me that McCord had only hearsay knowledge. I then called Ehrlichman to tell him about it. He said he had a copy of the letter and read it to me. I asked him how he received a copy so quickly. He responded: 'It just came floating into my office.' He asked me what I thought about it and I told him I was not surprised at all and repeated to him what O'Brien had told me, that McCord probably had only hearsay knowledge. He asked me if I was in my office and I informed him that I was a prisoner of the press and would be in shortly.

"After my conversation with Ehrlichman, the President called. Referring to our meeting on March 21st and McCord's letter, he said: 'Well, John, you were right in your prediction.' He then suggested I go up to Camp David and analyze the situation. He did not instruct me to write a report, rather he said to go to Camp David, 'Take your wife, and get some relaxation.' He then alluded to the fact that I had been under some rather intense pressure lately, but he had been through this all his life and you cannot let it get to you. He said that he was able to do his best thinking at Camp David, and I should get some rest and then assess where we are and where we go from here and report back to him. I told him I would go.

John Ehrlichman has testified that on April 5, 1973, Paul O'Brien told him that Magruder had advised O'Brien that Gordon Strachan had ordered Magruder to rehire Liddy, after he had fired him as General Counsel for CRP, stating "The President wants the project to go on," referring to the Watergate operation.

HUNT: He signed an affadivit given him this date by William O. Bittman stating that Colson had no prior knowledge of the Watergate break in. (Book 9, p. 3680-81)

April 8, 1973 (Sunday)

DEAN: He believes Nixon returned from California this date. Dean was scheduled to meet with the prosecutors that afternoon and give them his information directly. *Dean said he felt he should tell Haldeman this fact,* and when Dean called Haldeman from Shaffer's office and told him this, "he said that I should not meet with the prosecutors because, as he said, 'Once the toothpaste is out of the tube it's going to be very hard to get it back in.' After this comment, *I did not tell Haldeman whether I would or would* not meet with them, and in fact, the meeting went forward."

"During the meeting and while the President was flying east, I received a call from Air Force One from Higby, who *asked me to be in Wisdom's* (Ehrlichman's code name) office at a certain time for a meeting. I believe . . . four or five o'clock."

"I departed the meeting with the prosecutors *to go into the White House* . . . to Ehrlichman's office. There I found Ehrlichman and Haldeman." Dean said he told them about Colson taking a lie detector test. They asked him if he had met yet with the prosecutors, and when he would be called before the Grand Jury. Dean said he avoided answering *their questions, and told* them that his lawyers were still having discussions with the prosecutors about his appearance before the Grand Jury. Dean was then asked some questions "about testimonial areas, but I gave them evasive answers." (p. 2360-61)

EHRLICHMAN: He and the President talked about Watergate on the way back to Washington aboard Air Force One.

Ehrlichman met with Dean this date, "the day we got back from San Clemente." (p. 5706)

"He (Dean) had information . . . about how the prosecutors felt about the White House and . . . he imparted that to us . . . and that he did not feel that anybody in the White House was the target of the prosecutors . . ." (p. 5743)

'Magruder and Mitchell are involved in pre-Watergate, and La Rue, Mitchell and Mardian are involved in post-Watergate.' " (p. 5745)

Ehrlichman went on to say ". . . I have on these notes, which summarize the 'exposure' which he (Dean) thought Bob Haldeman and I had in this matter, mine being with Herb Kalmbach in the provision of money for the defendants, and I have the number '350' which relates to the $350,000 fund which presumably involved Bob Haldeman." (p. 5745)

"(Dean repeated) The U.S. Attorney assured me (Dean) I am not a target and neither is any other White House person." (p. 5746) [*I had told the prosecutors in early April 1973, of Dean's involvement in the January and February 1972 planning meetings with Mitchell.*]

Ehrlichman went on to say that he had interviewed Colson. Colson told him that his own sources within the government, and Bittman, had said that "funds had traveled from Parkinson, to O'Brien, to Hunt, to the Cubans, and on another occassion from O'Brien to Hunt and Mrs. Hunt. Colson said that Hunt and McCord had made a trip to Las Vegas and had had a plane standing by," and that they attributed the operation to Colson. (p. 5867)

[*I had not made a trip to Las Vegas within the past fifteen years.*]

DEAN: "The strategy that was now developing was a partial uncovering of the cover up; that is, to get Mitchell to step forward. On Friday, April 13, I went to Ehrlichman's office where Ehrlichman and Haldeman were present and discussing a meeting that they had just had with Colson and his attorney, Mr. Shapiro. They informed me that Colson had developed a plan to deal with the matter, and that was that Mitchell should be smoked out."

"Colson had concluded that obviously Mitchell had signed off on this matter and he should take responsibility for it, to end this thing. Ehrlichman also said that Colson had some other ideas, including the fact that the Gray hearings had been very damaging to me publicly, and I should not take any position out in front dealing with the Ervin committee hearings, because of this. I might add that Ehrlichman and Haldeman were most cynical about Colson's suggestions, and said to me that he was really scrambling to protect himself."

"By the week's end, it had been decided that the President would meet with Mitchell . . . and hopefully the President would be able to get Mitchell to come forward . . . while these discussions were going on, the President called Ehrlichman, and they had a brief discussion about the matter. I also recall that at one point in the conversation Ehrlichman said that 'He's right here,' referring to me." (p. 2364-65)

Fred La Rue visited him, and Dean made a memo of the meeting (Exhibit 34-46). La Rue asked Dean what he was going to do if called before the Grand Jury, and Dean said that he was going to tell the truth. La Rue said, "Let

Late September or October 1972

LaRue talked with Kenneth Parkinson regarding money for the defendants. (Book 6, p. 2292)

December 1972

LaRue said there was a meeting in Dean's office in December 1972 when Parkinson relayed a message of the need for money for the defendants, and LaRue recalls that $50,000 was paid to Bittman. (Book 6, pp. 2294-95)

LaRue said that his communications regarding the need for defendants money was either through Paul O'Brien, lawyer for CRP, or through Dean or Kenneth Parkinson. (Book 6, p. 2320)

Payments for some of the defendants continued on past March 21, 1973.

CHAPTER 51

July 6, 1972: NIXON TO GRAY — "PAT, YOU JUST CONTINUE TO CONDUCT YOUR AGGRESSIVE AND THOROUGH INVESTIGATION."

ACTING FBI DIRECTOR GRAY TO PRESIDENT NIXON: "Your White House staff is engaged in illegal and unlawful activities . . . people on your staff are trying to (mis) use the CIA and FBI, and are mortally wounding you . . . the investigation can lead quite high . . . and you should get rid of the people involved . . ."

NIXON TO GRAY: "Pat, you just continue to conduct your aggressive and thorough investigation."

GRAY: "I expected the President to ask me some questions . . ." (He never did).

Both Gray and General Walters were ready to resign over White House pressure.

July 6, 1972

On July 6, 1972, when President Richard Nixon called L. Patrick Gray, Acting Director of the FBI, about another matter, Gray told him about the problems CIA and the FBI were having with Nixon's White House staff.

These problems were of such magnitude that both L. Patrick Gray and General Vernon Walters, Deputy Director of CIA, were on the verge of resigning because of the White House pressure.

The testimony which follows gives the flavor of that pressure, and of the conversation which Gray had with Nixon, as testified to by Gray, and as recorded in memoranda of conversations made by General Walters the same day, July 6, 1972.

June 17 — Mid September 1972

Then between the date of the arrests and mid-September, 1972, according to Jeb Magruder, a "CIA defense" for the defendants was discussed in the many meetings which he had with John Mitchell. Magruder said that he didn't actively discuss it himself but that others in the meetings did so. (p. 1972)

December 21, 1972

By mid-December 1972, the plot thickened. Gerald Alch approached me on December 21, 1972, and stated that it was his recommendation as my attorney that I use a CIA defense — a false defense — that the Watergate operation was a CIA operation. He continued throughout the meeting to encourage me to do so. Again on December 26, 1972, he repeatedly tried to get me to use such a defense.

Simultaneously with the approach being made to me by Alch, the four Miami men were being pressured to use a similar defense. They were encouraged to do so by Hunt, Bernard Barker told me on January 7, 1973. My violent reaction to the use of such a false defense resulted in it being dropped.

Summary

General Vernon Walters has testified that the order to misuse CIA the first time, on June 23, 1972, came directly from H. R. Haldeman.

John Dean said that the second order to misuse CIA, on approximately June 28, 1972, came from John Mitchell, Director of CRP, at the suggestion of Robert Mardian, an assistant of Mitchell.

Gerald Alch indicated to me that the idea to misuse CIA (the third time,) on December 21, 1972, came to him from William O. Bittman, attorney for Hunt. Who Bittman received it from is not known. Paul O'Brien, attorney for CRP, may have further knowledge on this subject.

CHAPTER 55

EXECUTIVE CLEMENCY

The subject of Executive clemency, Executive pardon, or a Presidential commutation of sentence, as it has been variously described in Senate Watergate testimony, is a highly crucial issue for resolution. Was it offered by President Richard Nixon?

Testimony from Dean, Magruder, and McCord have all reflected that Executive clemency was promised the defendants in 1972 and in 1973 as a device for trying to keep the defendants silent, and in order to avoid others in the White House and in CRP from becoming implicated by the defendants' testimony.

The promise of Executive clemency constitutes bribery, grounds for impeachment of the President, since it was promised prior to plea or conviction of the defendants and for the purpose described.

Dean has testified that both Ehrlichman and Colson had told him in early January 1973, that Richard Nixon had promised them that Hunt would receive Executive clemency and that they could so advise Hunt. Dean said Nixon twice raised with him the fact that he had promised Hunt Executive clemency through Ehrlichman and Colson.

I received a promise of Executive clemency from Dean, through White House agents John Caulfield and Anthony Ulasewicz, in January 1973.

Bernard Barker told me on January 8, 1973, that he was going to William O. Bittman's office to receive word about Executive clemency. My attorney Alch, also said that Barker was to receive such word from Bittman that day.

Magruder has testified that he received promises of Executive clemency from both John Mitchell and John Dean in 1972 and from Mitchell again in 1973.

Liddy allegedly received confirmation of his receiving Executive clemency in word passed to him by Egil Krogh.

The testimony on this subject which has occurred, is set forth below.

August 16, 1972

Magruder has testified that while Dean was coaching him for his Grand Jury appearance on August 16, 1972, Dean told him "even if the worst happened, everything would be taken care of, including Executive clemency." (p. 2011)

September, 1972

Magruder testified that when he once again had to appear before the Federal Grand Jury he talked with John Mitchell and John Dean and asked them for an assurance regarding Executive clemency. "They made assurances about income and being taken care of . . . and a job afterward . . . and also that there would be a good opportunity for Executive clemency." (p. 1924-26)

Early October and November, 1972

I have testified that in early October, 1972, at a restaurant at 1820 M Street, N.W., Washington, D.C., I first heard about Executive clemency when my attorney, Gerald Alch, told me he had just come from a meeting in the office of William O. Bittman, E. Howard Hunt's lawyer. Alch's first words were, "Nobody gets up on that stand." In return, Alch said, "all the men are to be given Executive clemency, money while in prison and rehabilitation afterwards."

During the month of October and November, 1972, I continued to hear on several occasions the same message from E. Howard Hunt and Mrs. Hunt — that the defendants were promised Executive clemency, money while in prison, and "rehabilitation afterwards." Hunt said his message came to him through William O. Bittman, his attorney.

January 3-4, 1973

On the evening of January 2, 1973, Dean has testified, Paul O'Brien, attorney for CRP, told him that E. Howard Hunt was upset and wished to plead guilty, but before he did so he wanted some assurances from the White House that he would receive Executive clemency.

Dean said O'Brien told him that Hunt would only take the assurances from Charles Colson, for whom Hunt had formerly worked, and that William O. Bittman, Hunt's attorney, had been trying to reach Colson, unsuccessfully.

Dean said that on the morning of January 3, 1973, he received another call from Paul O'Brien who said that he had talked with Bittman; the matter had to be resolved immediately, and that Bittman had been unsuccessful in reaching Colson.

Dean went on to say that Colson called Dean and told him Bittman had been trying to reach him, and asked if Dean had seen a letter that Hunt had sent him. Dean had read the letter and it reflected that Hunt was trying to have Hunt meet with Colson. Dean repeated to Colson, he said, what he had heard, that Bittman wanted to discuss Executive clemency for Hunt with Colson. Dean stated that Colson said he would do whatever Dean suggested; however, he didn't want to meet with Bittman.

Dean next met with Ehrlichman, telling him of the situation. Ehrlichman told Dean, Dean testified, that Colson should talk to Bittman, which he did, "about Hunt's potential for Executive clemency." Colson came to a meeting in Ehrlichman's office "very shaken" and said he felt it was imperative that Hunt be given assurances of Executive clemency. Dean quoted Ehrlichman as saying he would speak to the President about it. Ehrlichman however, told Colson that he should not speak to the President about the subject. (Book 3, p. 973-74)

January 4, 1973

Dean testified that he learned from Ehrlichman that Ehrlichman "had given an affirmative to Colson regarding Executive clemency for Hunt." Colson, Dean learned, had later talked with Bittman about the matter. (Book 3, p. 973-74)

January 5, 1973

Another meeting was held on the morning of January 5 in Ehrlichman's office, in which Colson explained exactly what he had told Bittman regarding Executive clemency. He said he told Bittman that "he could not give a specific assurance, but he gave him a general assurance." He told him that "clemency usually came up around Christmas and that a year was a long time."

Ehrlichman confirmed to Dean that the other defendants could be promised Executive clemency also.

After the meeting Colson told Dean, Dean testified, that he had thought the matter so important that he had taken it up with the President himself. Dean also learned from a telephone call from Paul O'Brien that Hunt, according to Bittman, was satisfied with Colson's assurances. (Book 3, p. 973-74)

Mitchell denied that he told Dean to promise McCord Executive clemency. (Book 4, p. 1673) Mitchell admitted that Dean told him of a dialogue going on between Hunt, Bittman, and Colson about Executive clemency. (Book 4, p. 1674)

January 7, 1973

In a meeting with Bernard Barker on the evening of January 7, 1973, at the Sheraton Carlton Hotel restaurant in Washington, he told me that Hunt was going to plead guilty. Barker stated that this was alright for Hunt, because he had received an assurance from the White House that he would receive Executive clemency, and that Hunt had the clout to insure that he would get it. Barker felt that he personally needed more assurance than word, third-hand through Hunt, that the four Miami defendants would also receive it.

January 8, 1973

On the afternoon of January 8, 1973 my attorney, Gerald Alch, told me that William O. Bittman, Hunt's attorney, wanted to talk with me after court that day to discuss Executive clemency with me. I told Alch I had no interest in hearing about it. Alch told me, "I think you should." Realizing that the White House was up to another new "game plan," I decided to go and hear from Bittman what was up. As I left the court that afternoon with Gerald Alch and Bernard Shankman, his local Washington counsel, Bernard Barker asked if he could ride to Bittman's office with us and we agreed. I presumed that Bittman was going to talk to both of us together, and became angry at the arrogance of Bittman. Alch took me aside when we arrived at Bittman's address and Barker left saying he was going up to see Bittman. A half hour later I went up with Alch and Shankman to Bittman's office, where Bittman and Alch disappeared for several minutes. Alch finally came back and told me I would be hearing that evening from a man I had known at the White House. I presumed it would be John Caulfield who had recruited me for the CRP position in September, 1971.

That evening I received a telephone call from an individual who I later learned was a White House agent, Anthony Ulasewicz. He told me to go to a nearby telephone booth, which I did, where he read the following message which he said came from Caulfield:

> "Plead guilty."
> "One year is a long time."
> "You will get Executive clemency. Your family will be taken care of and when you get out you will be rehabilitated and a job will be found for you. Don't take immunity if called before a Grand Jury."

Through a series of meetings all through the January 1973 trial, Caulfield continued to try to get me to accept Executive clemency and remain silent. (Book 1, p. 132-41)

74-5181

2/27/74

The conspiracy to overthrow the President and, with it weaken the American government sufficiently for its "quiet" overthrow -- a conspiracy mis-named "Watergate" -- a conspiracy implemented by E. Howard Hunt and G. Gordon Liddy, can be broken through its weakest link, John J. Caulfield. Mr. Caulfield knows a good deal about the conspiracy into which he was entrapped, although not all of it. He knows enough, however, and is sufficiently frightened and sick at heart, to finally break down and break open a conspiracy which has remained secret and closed for far too long.

139-4089-2708

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

March 1, 1974

The Honorable Earl J. Silbert
719 Third Street SW
Washington, D. C. 20024

Dear Mr. Silbert:

This letter is with reference to your nomination to be United States Attorney for the District of Columbia, which is being considered by the Senate Judiciary Committee.

The Association of State Democratic Chairmen has submitted to the Committee a report prepared by Mr. Charles Morgan, Jr., Director, Washington National Office, American Civil Liberties Union; said report being to the Special Prosecutor on certain aspects of the Watergate affair.

The Judiciary Committee feels that it would be helpful, in considering your nomination, for you to make such written response to this report of Mr. Morgan as you deem appropriate prior to the hearing to be held on your nomination.

There is transmitted herewith one copy of the report submitted by Mr. Morgan.

It would be appreciated if you would furnish to the Committee any written response you wish to make by March 12, 1974, with sufficient copies so that each of the sixteen members of the Committee might have one copy.

This letter and the Morgan report are being delivered to you through the good offices of Mr. Malcolm Hawk, Acting Assistant Attorney General for Legislative Affairs.

Very truly yours,

Peter M. Stockett

Peter M. Stockett

Enclosure

ENCLOSURE 2708
TO SERIAL 2708

UNITED STATES DEPARTMENT OF JUSTICE

OFFICE OF THE UNITED STATES ATTORNEY

WASHINGTON, D.C. 20001

ADDRESS ALL MAIL TO:
UNITED STATES ATTORNEY
ROOM 3130-C
UNITED STATES COURT HOUSE BUILDING
3RD AND CONSTITUTION AVENUE NW.

IN REPLY, PLEASE REFER TO INITIALS AND NUMBER

March 12, 1974

EJS:mm

Honorable Peter M. Stockett
Chief Counsel & Staff Director
United States Senate
Committee on the Judiciary
Washington, D. C. 20510

Dear Mr. Stockett:

By letter dated March 1, 1974, you transmitted to me the request of the Senate Judiciary Committee, which is considering my nomination to be United States Attorney for the District of Columbia, for a response to "A Report to the Special Prosecutor on Certain Aspects of the Watergate Affair," a report prepared by Mr. Charles Morgan, Jr. Enclosed pursuant to the Committee's request are the original and sixteen copies of the response I have prepared.

Following receipt of your letter, in order to keep the Special Prosecutor informed of requests to me concerning Watergate - related matters, as I have since the withdrawal of Mr. Campbell, Mr. Glanzer, and myself from the case, I advised him of the request of the Senate Judiciary Committee and my intention to respond. Enclosed are seventeen copies of my letter to the Special Prosecutor and his reply to that letter.

If there is any other information I can provide any members of the Committee or its staff, please do not hesitate to contact me.

Sincerely,

Earl J. Silbert

Earl J. Silbert

Enclosures

OFFICE OF THE UNITED STATES ATTORNEY

WASHINGTON, D.C. 20001

ADDRESS ALL MAIL TO:
UNITED STATES ATTORNEY
ROOM 3130-C
UNITED STATES COURT HOUSE BUILDING
3RD AND CONSTITUTION AVENUE NW.

March 4, 1974

IN REPLY, PLEASE REFER TO INITIALS AND NUMBER
EJS/eh

Honorable Leon Jaworski
Special Prosecutor
Watergate Special Prosecution Force
United States Department of Justice
1425 K Street, N. W.
Washington, D.C. 20005

Dear Mr. Jaworski:

The purpose of this letter is to advise you that the Committee on the Juidicary of the United States Senate, which is considering my nomination as United States Attorney for the District of Columbia, has requested that I furnish to the Committee a written response to a "Report to the Special Prosecutor on Certain Aspects of the Watergate Affair," a report prepared by Charles Morgan, Jr. This request was transmitted to me by a letter dated March 1, 1974, from the Chief Counsel of the Committee. For your information a copy of this letter is herewith enclosed.

It is my intention to comply with the request of the Judiciary Committee. Mr. Morgan's Report contains a number of wholly unfounded, but serious charges with respect to the manner in which, as the attorney in charge, I conducted the investigation

and prosecution of the Watergate burglary and wiretape. These charges reflect adversely not only upon me personally, but also, and more importantly, upon the integrity and competence of the administration of criminal justice in this critically significant case, by the United States Attorney's Office and the Department of Justice. Moreover, the Morgan Report and its charges have been made public, first when filed as an appendix to a motion in United States v. Liddy, et al., Criminal Case No. 1827-72, and now presented to the Senate Judiciary Committee. This most recent public filing, particularly in view of the request of the Senate Judiciary Committee, warrants a response at this time.

Thus far, I have not responded to these inaccurate, baseless charges in public. As you know, however, I have previously submitted to you a detailed, comprehensive response to Mr. Morgan's Report. In preparing my response to the Judiciary Committee, I plan to follow the general format of the response I previously furnished you, omitting however specific references to grand jury minutes or testimony.

Sincerely,

Earl J. Silbert

EARL J. SILBERT
United States Attorney

cc Henry E. Petersen
Assistant Attorney General

Enclosure

WATERGATE SPECIAL PROSECUTION FORCE
United States Department of Justice
1425 K Street, N.W.
Washington, D.C. 20005

March 8, 1974

Honorable Earl J. Silbert
United States Attorney
Room 3136-C
United States Court House
Washington, D. C. 20001

Dear Mr. Silbert:

Thank you for your letter of March 4, advising me that you have been asked by the Senate Judiciary Committee to submit a written response to the charges made by Charles Morgan, Jr. In order to provide the Committee with all available facts, I certainly agree that it is appropriate for you to respond to their inquiry. If you submit a document that differs significantly from the written response you supplied to me several weeks, I would of course appreciate receiving a copy of it.

Sincerely,

LEON JAWORSKI
Special Prosecutor

cc: Henry E. Petersen
Assistant Attorney General

RESPONSE FOR THE SENATE JUDICIARY COMMITTEE TO "A REPORT TO THE SPECIAL PROSECUTOR ON CERTAIN ASPECTS OF THE WATERGATE AFFAIR," A REPORT PREPARED BY CHARLES MORGAN, JR

By: Earl J. Silbert
United States Attorney
for the
District of Columbia

INDEX

INDEX

Respon[illegible] For the Senate Judiciary C[illegible]mittee to
"A Report to the Special Prosecutor
On Certain Aspects of the Watergate Affair,"
A Report Prepared by Charles Morgan, Jr.

By: Earl J. Silbert
United States Attorney
For the District of Columbia

A. Introduction

By letter dated March 1, 1974, the Senate Judiciary Committee, through its chief counsel, has requested that I file with the Committee a response to "A Report to the Special Prosecutor on Certain Aspects of the Watergate Affair" prepared by Charles Morgan, Jr., hereinafter referred to as the Morgan Report.

The Morgan Report was first filed with then Special Prosecutor Archibald Cox shortly after his appointment in May, 1973. It strongly urged, for reasons stated in the Report, that Donald Campbell, Seymour Glanzer, and I, the three prosecutors handling the Watergate case prior to Professor Cox's appointment, be immediately removed from his staff. (Pp. i-ii) Professor Cox rejected the recommendation since we continued to work on the case, at his request, during the period of transition. Five weeks after his appointment, Professor Cox granted our renewed request to him to be relieved of responsibility for the Watergate case. After review of our handling of the case, Professor Cox wrote to me that thus far "none of us [he and his staff] has seen anything to show that you did not pursue your professional duties according to your honest judgment and in complete good faith." 1/

After Professor Cox failed to accept Mr. Morgan's recommendation to remove us from the case, Mr. Morgan, on June 20, 1973, made a motion before Chief Judge Sirica to file a pleading in the Watergate case which consisted essentially of the Morgan Report. That motion was denied by Judge Sirica on July 6, 1973. 2/

1/ Letter from Archibald Cox to Earl J. Silbert, dated June 29, 1973, attached hereto as Appendix A.

2/ See Order, Appendix B.

Now, seven months later, the Morgan Report has been filed with the Senate Judiciary Committee and a response has been requested.3/ This response will reply to the abbreviated charges set forth at pages iv-vi of the Report, as amplified in subsequent portions of the report. Other allegations in the Morgan Report will be included as part of the response to a related enumerated allegation.

A point by point response to a series of allegations of the kind contained in the Morgan Report may appear defensive in nature. Neither this response nor the attitude of Mr. Campbell, Mr. Glanzer, and myself toward the investigation we conducted, should be so construed. The "best evidence" of the nature and quality of our investigation would be (1) the transcripts of the grand jury proceedings conducted prior to the return of the September 15, 1972, indictment and after the sentencing on March 23, 1973, (2) our prosecutive memorandum dated September 13, 1972, to Mr. Henry Petersen and (3) our 87 page status report dated June 7, 1973, to Special Prosecutor Archibald Cox which summarized the investigation up to that date. As we stated in a pleading filed before Chief Judge Sirica on February 14, 1973, concerning the release of the grand jury testimony to the Senate Select Committee, we favor the release of this evidence "because of the unique nature of the case," and "so that the nature of the investigation, previously disclosed only through the necessarily limited forum of a jury trial, will be subject to scrutiny and thereby aid the ends of justice, ..." The Federal Rules of Criminal Procedure, the policy of the Department of Justice, and the understandable preferences of the Special Prosecutor, however, have precluded their public disclosure.

As a result, the public record of the accomplishments of our investigation is both meager and distorted. The record does show that the original seven Watergate defendants insisted on maintaining a strict silence

3/ I have previously filed with the Special Prosecutor a response to the Morgan Report. This response follows the same general format of the previous response, omitting, however, reference to specific content of grand jury minutes or testimony and internal memoranda from me to either the Special Prosecutor or Henry Petersen, Assistant Attorney General in charge of the Criminal Division. (See Rule 6(e), Federal Rules of Criminal Procedure.)

despite repeated attempts to obtain their cooperation. It shows that we planned to compel their testimony before a grand jury as to the involvement of others by granting them limited immunity after they were convicted. (See trial transcript, pp. 93-94, 116-17) It was the reconvening of the grand jury after the conviction of the "Watergate Seven" that was critical in prompting John Dean, Jeb Magruder and their counsel to disclose to the prosecution in April, 1973, for the first time the existence of a massive conspiracy to obstruct justice, its participants, and the motivations of those involved.

The results of this breakthrough - the agreement of Jeb Magruder and offer of Fred LaRue to plead guilty after evidence of their guilt had been developed, the formulation of a comprehensive prosecutive theory, the development of a tactical and strategic approach to the further development of the case, the discovery and disclosure of the Ellsberg burglary and its relationship to the Watergate coverup, the disclosure of the transfer from the White House and Committee for the Re-election of the President, hereinafter referred to as CRP, of enormous sums of cash to the Watergate Seven and of post-Watergate arrest communications with the Central Intelligence Agency - these and other accomplishments of our investigation are not part of the public record. Moreover, the guilty plea of John Dean, a disposition similar to that we offered him on May 22, 1973, and to which he referred at the time he entered his guilty plea, the plea of Herbert Porter to false statements, and the indictment of Egil Krogh and the current indictments of others for perjury or false declarations based on our examination of them during the grand jury investigation we conducted should dispel any notion that we were not asking the "right" questions.

B. Response to Criticism for Failure to Charge Unlawful Disclosure of Illegal Intercepted Wiretap Information and Failure to Make More Use During the Initial Investigation of Use-Immunity

1-2, 22. The Morgan Report criticizes the indictment for failure to include counts charging illegal disclosure of the unlawfully wiretapped conversations. It

then at least implies that the omission was purposeful on the grounds that an investigation into this area would have necessarily led to the persons for whom the logs or the information they contained were intended. (P. 82, n.1)

This implication is both unfounded and unfair. Indeed the truth is the very opposite of what the Report implies. The September 15, 1972, indictment contained no disclosure count because we had no evidence to whom the logs of the intercepted conversations were being disclosed. Baldwin informed us that he gave them only to McCord and did not know what McCord did with them. 4/ It was because of our desire to discover the recipients of the information and our realization that the trial would not occur prior to the national election on November 7, 1972, that on October 25th, 1972, we approached McCord's attorneys with a very generous plea offer. The purpose of the offer was to secure McCord's cooperation, particularly disclosure from him as to what he did with the logs, so that prior to the election, through his plea, the public might know. McCord, however, his attorneys informed us, rejected the offer.

The Morgan Report suggests that McCord should have been granted use-immunity and in general criticizes the prosecution for limited use of immunity prior to trial. (Pp. vi, 82, n.1) The use of immunity prior to trial was considered and rejected. First, prior to trial or plea and therefore without a sentence hanging over his head, we had no immediate leverage on McCord to persuade him to be truthful. Moreover, if he testified, denied involvement of others, and than we decided to prosecute him, the heavy affirmative burden placed by the Supreme Court and lower federal courts on establishing an independent source for use of evidence against a use-immunized defendant might well have jeopardized the successful prosecution of McCord. E.g., Kastigar v. United States, 406 U.S. 441, 460-62 (1972). This

4/ There were only two exceptions to this. The memorandum of the first interception, Baldwin saw McCord show to Liddy. (Trial transcript, p. 937) Second, when McCord was out of town June 6-8, 1972, he had Baldwin deliver the logs in an envelope to a person named on the envelope at the Committee for the ReElection of the President (CRP). Baldwin left the envelope with a security guard at CRP. He never could remember the name on the envelope. (Trial transcript, pp. 1032-33) We now know, of course, from McCord that the name was Liddy.

procedure - giving use-immunity to McCord or to Hunt and Liddy prior to trial - I therefore concluded, was unsound, particularly because of the absence of any hard evidence at the time that higher-ups were involved. Had immunity been granted, the involvement of higher-ups not discovered, and the prosecutions of Liddy, Hunt, and McCord then been unsuccessful because of the Kastigar burden not being satisfied, the prosecution would have looked and been foolish. Our plan, accordingly, if McCord, like Hunt and Liddy, did not accept our repeated requests for cooperation and suggestions of reducing exposure, was to convict the defendants and then grant them immunity to compel their testimony with respect to the involvement of others. (See Trial transcript, pp. 93-94, 116-17) With a complete trial record establishing the evidence accumulated prior to a grant of immunity, McCord or any of the other defendants, all of whom were to be granted immunity, could be successfully retried even if their convictions were reversed on appeal.

C. Response to Criticism of Failure to Call John Dean as a Witness at Trial

3, 23. The Morgan Report criticizes the prosecutors for failing to call John Dean to testify, particularly about White House actions concerning the contents of Howard Hunt's safe in the White House. (Pp. 17-29, 56) The clear implication of this section is our cooperation with John Dean and the Administration in a cover-up. As a logical matter, if that was our purpose, we would not have opposed Hunt's motion to suppress the fruits of the search of his White House safe. Instead, we did our very best to defend (so that we could use the material evidence at trial) what we recognized as a close question - the legality of the search which was made without a warrant.

A reading of our opposition to Hunt's motion to suppress response shows that it was based on lengthy interviews of John Dean, his deputy Fred Fielding, and White House Staff Secretary Bruce Kerhli.5/ Had

5/ The Morgan Report comments on our refusal to have the representations of fact contained in our opposition sworn to (pp. 19-20). This is simply unfair. I have never

(Footnote continued on the next page.)

there been a hearing on the motion, John Dean clearly would have been required to testify and was so advised by me. At the hearing on pretrial motions on October 25, 1972, Chief Judge Sirica ruled that the hearing on Hunt's motion to suppress would be held just prior to trial. In preparation for the hearing, Dean, Fielding, and Kerhli were interviewed by me in late December, 1972, and early January, 1973. Dean did not testify because Hunt withdrew his motion to suppress after he decided to plead guilty to this case.

5/ (Continued)
filed, nor does our office as a general policy file affidavits together with the numerous oppositions to motions to suppress we regularly file, even when the defendant's motion to suppress is supported by affidavits. This is particularly so because, as stated in our opposition, it is our view that affidavits filed with these motions have no effect on either the burden of going forward or the burden of persuasion.

The Report also insinuates (pp. 4, 19) that there was something questionable about our willingness to allow pretrial discovery of documents we intended to use as evidence at trial in return for reciprocal discovery and our willingness to permit Hunt to inspect, not recover, the personal property taken from his safe. The only questionable aspect of this is the basis for the Morgan Report query. There certainly is no basis in law for refusing to permit a defendant or his counsel to inspect personal property of his which the Government seized or to discover documents, papers, etc. that the Government intends to use in evidence. See Rule 16(b), Federal Rules of Criminal Procedure. To better prepare our case, we as any responsible prosecutors would do, tried to utilize Rule 16(c) to condition our legal obligation to give this discovery on the defendants' agreeing to give us reciprocal discovery. An examination of our motions' papers will show that we based our pleadings strictly on the Federal Rules of Procedure, agreeing to give no more or less than they require.

The Morgan Report's insinuation, therefore, that we deliberately avoided calling Mr. Dean is totally false. He did not testify at trial with respect to the material from Hunt's safe because that portion of the material which was relevant to the charges against Liddy and McCord and which was admitted into evidence was recovered by Kerhli and turned over to the FBI by Fred Fielding, not John Dean. John Dean's testimony would, therefore, have been hearsay and cumulative. 6/

The Morgan Report attempts to show our lack of interest in pursuing higher-ups by citing the claim in our opposition to Hunt's motion to suppress that Hunt had terminated his employment in the White House in late March, 1972, despite Hunt's allegation that he was employed through June, 1972. (P. 20) The

---

6/ In view of the insinuation, indeed theme, in the Morgan Report that I was acting for the White House during the investigation (see pp. 105-06), it should be pointed out that the only contact I had with any member of the White House during the grand jury investigation was at three depositions of White House staff members at the Department of Justice at which John Dean was present as their counsel - though not in the room during the formal questioning. Even on these three occasions there was no conversation beyound that related to the deposition. Other than that, I had no contact at all with White House personnel. In fact, I had only one one-hour meeting with Mr. Kleindeinst and one two minute telephone conversation with him. The only person other than Mr. Campbell and Mr. Glanzer with whom I discussed the case was Mr. Petersen. I reported to him on a regular basis, generally advising him of developments in the investigation and consulting with him about investigative steps we planned to take. From time to time I also informed Harold Titus, the United States Attorney, of the progress of the investigation. After the indictment and prior to trial, my only contact with White House personnel consisted of interviews with respect to the search of Hunt's safe and two contacts with John Dean - once when he was present as counsel when I interviewed Chapin and Strachan and once when Mr. Petersen, Mr. Glanzer, and I requested his assistance vis-à-vis the CIA with respect to the phony CIA defense we thought the defendants might raise at trial.

fact is that the records we obtained from the White House and Hunt's own copy of them seized from his safe showed and the witnesses we interviewed insisted that Hunt's employment did terminate at the end of March. As a matter of fact, we were unable, despite our efforts, to determine to our satisfaction what Hunt was doing for the White House in January, February, and March, 1972. Indeed, I raised this very matter in my prosecutive memorandum to Mr. Petersen dated September 13, 1972.

D. Response to Alleged Ignoring of Information of Removal from Hunt's White House Office of Important Documents

4. The Morgan Report claims that we ignored information brought to us by a Washington, D.C. attorney regarding eight cartons of documents, including plans to bug the Watergate, which had allegedly been removed from Howard Hunt's White House office (pp. 29-30). I have previously denied, a denial I repeat here, that such information was ever offered to me prior to April, 1973. I do recall a luncheon conversation with that same attorney concerning his legal obligation to disclose the identity of a client who had documents relating to the Common Cause suit against CRP seeking the identity of its contributors. When in April, 1973, the matter was brought to our attention, we immediately compelled the attorney to reveal the identity of his client. Interestingly, the client, after receiving statutory use-immunity at the request of the prosecutors, denied that he had ever given to his attorney the information concerning documents from Hunt's office relating to Watergate.

E. Response to Allegation that Prosecutors Too Willingly Accepted Magruder's Testimony and Ignored Sloan's Warning of Magruder's Attempted Subornation of Perjury

5 - 8. The Morgan Report claims that we portrayed to the court and jury that Liddy was the man with ultimate responsibility for the Watergate incident "when there was every indication to the contrary." (Pp. iv, 44-54)

There is no question that with respect to the charges before the jury and Chief Judge Sirica, we portrayed Liddy as the boss, mastermind, money-man, etc. That was the evidence available to us at that time and which was admitted at trial.

Any argument to the jury that there were others involved would have been grossly improper, first, because there was no evidence admitted at the trial to support such an argument; second, because even apart from the evidence admitted at trial, we had no admissible evidence at the time that there were others involved; and third, because an argument premised on an inference of "convict these defendants so that we can get their bosses" would have been prejudicial to the defendants since unrelated to their guilt or innocence. See and compare, American Bar Association Project on Standards for Criminal Justice, The Prosecution Function §§ 5.8(d), 5.9. That is why we had, long before the trial and as referred to above, decided to try to convict the Watergate Seven as quickly as possible and then immunize them and compel their testimony before the Wategate grand jury. (see Trial transcript, p. 116).

I cannot agree with the Morgan Report that "every indication was to the contrary" of Liddy being the boss off on an enterprise of his own. There were, suspicious circumstances indicating the possible involvement of others: (1) the large amount of cash given to Liddy, (2) Magruder's vague testimony, particularly as to the funding, assignment, and accounting for these large sums, (3) the conflicts of Magruder's testimony with Sloan, and (4) other unanswered questions we had concerning Hunt's and Liddy's activities at the White House, as set forth in my September 13, 1972, prosecutive memorandum to Mr. Petersen.

There were, however, factors which indicated that the responsibility for this bizarre escapade could well have ended with Liddy. These included Porter's corroboration of Magruder, the stupidity of the burglary as acknowledged by all - Democrats and Republicans alike -, the strange personalities

of Liddy and Hunt, Liddy and Magruder's falling out in March, 1972, and their known intense hostility, indeed hatred, of one another, and the absence of any hard evidence uncovered by our investigation that higher-ups were involved. Finally, we were at that time obviously unaware of the massive conspiracy to prevent our discovering the facts and of the many witnesses who lied outright, gave half-truths and misleading statements, or, intentionally or not, withheld material information from the investigation.

Nevertheless, the Morgan Report asserts that we submissively built our case on the perjurious testimony of Magruder and Porter when we had been forewarned by Sloan of Magruder's attempted subornation of perjury. (Pp. 44-54) This is untrue and misleading.

As shown in my original prosecutive memorandum to Mr. Petersen, dated September 13, 1972, we had grave reservations about Magruder's testimony. Indeed my prosecutive memorandum indicated a reluctance to call Magruder as a witness at trial. Based on Sloan's testimony, particularly that concerning Magruder, and the fact that as Liddy's superior Magruder was the obvious next rung on the conspiratorial ladder if it went higher than Liddy, we had advised Magruder of his Constitutional Fifth Amendment right against self-incrimination and his Sixth Amendment right to counsel when he was called to testify before the grand jury on August 16, 1972, advice that is given targets or suspects of a grand jury investigation. As he demonstrated at the trial, when neither the defense counsel nor Judge Sirica questioned his testimony in the slightest, and before the Senate Watergate Committee, Magruder is a convincing, persuasive witness. Moreover, his testimony was significantly corroborated by Herbert Porter, another persuasive witness whom we had no reason to believe was lying and whose testimony was also not questioned at trial by either defense counsel or Judge Sirica.

The decision to use Magruder as a witness at the trial was based on a number of factors. Probably foremost among them was our concern that without Magruder,

who alone could explain why Liddy was authorized to receive $250,000, our case would appear so incomplete as to raise questions with the petit jury. Sloan, whom we intended to call, always insisted he did not know the purpose of the authorization. Stans and Mitchell, as explained in more detail, infra, denied any detailed knowledge. [redacted] b3 Thus, with misgivings and realizing the defense would be given as Jencks material his extensive grand jury testimony, we decided to call Magruder and also Porter.

Contrary to Mr. Morgan's allegation, we did not ignore Sloan's testimony relating to his discussions with Magruder concerning the amount of cash disbursed to Liddy. Though perhaps only a technical difference, Sloan did not inform us, as he did the Senate Select Committee (Senate Hearings, pp. 1245-46, 1270, 1279-81, 1305-06) that Magruder specifically suggested he commit perjury. [redacted] b3

Despite this somewhat unusual response, the matter was explored in the grand jury fully with both Sloan and Magruder, as they both acknowledged before the Senate Select Committee (Senate Hearings, pp. 1270, 1306, 2090). It was this information from Sloan, together with Magruder's logical position as the next rung above Liddy on the ladder of the conspiratorial hierarchy, that caused us to advise Magruder of his Constitutional rights before the grand jury. [redacted] b3

This testimony was not incredible, particularly in light of the obvious fact to us that Sloan and Magruder did not at all like each other. Interestingly, though he now has admitted lying on a number of other major matters before the grand jury and at trial (Senate Hearings, pp. 1922, 1928, 2012), Magruder has insisted that he was not lying on this matter and did not try to persuade Sloan to commit perjury. (Senate Select Committee Hearings, pp. 1916-17, 1967)

The Morgan Report implies that Sloan informed the prosecutors that Fred LaRue advised him to take the Fifth Amendment. (Pp. 51-53) My recollection, however, is that at some time, after the return of the indictment, Sloan told us that he was advised to assert the Fifth by the Committee lawyers, certainly not LaRue who is not a lawyer, advice that caused him to seek his own counsel. I recall no such information from Sloan prior to the indictment, a recollection supported by the absence of any reference to this in Sloan's grand jury testimony.

The Morgan Report is critical of the failure of the prosecutors to interview Robert Reisner, Magruder's Administrative Assistant from whom they could have allegedly learned of Magruder's perjury, Gemstone, and higher-ups. (Pp. 54, 60, 82, n.1) Reisner was never interviewed because his name was never brought to our attention from any of the innumerable interviews conducted by the FBI at CRP, in the grand jury testimony of CRP personnel, or from any other leads that developed. Indeed as Herbert Porter subsequently told us and testified before the Senate Select Committee, there was an attempt by committee counsel to keep Reisner from the investigators. Furthermore, there is no assurance or even likelihood that had the FBI interviewed Reisner, they would have learned of the Gemstone file from him. Reisner did not know the significance of Gemstone: he only knew there was a file by that name. Moreover, with CRP counsel insisting on attending all interviews of CRP employees, the latter never volunteered anything. Of those who knew the significance of Gemstone, McCord, Hunt, and Liddy asserted their Fifth Amendment privilege, and Sally Harmony (Liddy's secretary) and Jeb Magruder lied to the grand jury and the FBI. This is not intended to imply that if asked directly about Gemstone, Reisner himself would have lied about it, but the FBI agents would have had to be clairvoyant to ask about it.

Finally, if Mr. Reisner possessed all the incriminating evidence the Morgan Report implies he did, there was nothing of which we are aware preventing him from coming forward and disclosing this information to the FBI, grand jury, or the prosecutors.

F. Response to Criticism for Not Obtaining Search Warrant for McCord's Home or Place of Business After his Arrest

9. The Morgan Report alleges that the prosecutors failed to secure an immediate search of McCord's "nearby" (Rockville) Maryland residence or his place of business. This criticism in a report submitted in behalf of the ACLU is most surprising. For a search of McCord's home or place of business would have been in direct violation of the Fourth Amendment's requirement of probable cause.

It is elementary that no warrant can be obtained to search a person's residence or office unless there is reasonable or probable cause to believe incriminating evidence, fruits or implements of crime, or contraband is present. Until Baldwin agreed to talk to us on July 5, 1972, the prosecution had no information that any legally seizable evidence was ever at McCord's home. By then - eighteen days after the arrest and twelve days after McCord's release from jail - there was no longer any reasonable basis at all to believe the property was still at McCord's home where Baldwin claimed to have delivered it on June 17th. For this reason, there was no conceivable basis in law for obtaining a search warrant, either on June 17, or July 5, 1972.

Recognizing that there was no basis for a search warrant, the prosecutors subpoenaed McCord's wife and daughter to the grand jury concerning the items Baldwin delivered. McCord had asserted his Fifth Amendment privilege despite our attempt in the grand jury to elicit his cooperation. Mrs. McCord invoked her marital privilege not to testify. Based on the testimony of Mr. McCord's daughter, other leads were pursued. Only after these proved fruitless did we then advise Mr. McCord's lawyers that if we did not obtain the receiver and walkie talkies Baldwin delivered

to his home, we would charge his wife with obstruction of justice. We never had any firm intention of so charging McCord's wife. The threat worked, however, and we received the material.

G. Response to Criticism for Not Proving at Trial the Ultimate Source of the Mexican Checks

10. The Morgan Report claims that the prosecutors failed to offer chain-of proof evidence of the ultimate source of the Mexican checks. (Pp. 31-43) The claim is, of course, true. The report, however, weaves together a variety of unrelated facts to try to demonstrate impropriety in the failure of the prosecution to produce the source of the Mexican checks at trial.

The facts are that in the grand jury investigation we did trace the checks to their ultimate source, the donor. Our investigation, however, disclosed no relationship whatsoever of these checks to the Watergate incident until such time as Sloan received them at CRP and turned them over to Liddy. Sloan's receipt, his giving them to Liddy, and the subsequent path followed by the checks and the cash into which the checks were converted, until some of that cash was recovered from the five arrested defendants, were fully explored in detail at trial. To my knowledge, the absence of any relationship of the source of these Mexican checks to Watergate remains as true today as it did when the indictment was returned in September, 1972, or when the case was tried in January, 1973. With respect to possible election law campaign financing violations, the relevant portions of the grand jury testimony from our investigation were turned over in 1972 to the Special Unit of the Fraud Section of the Department of Justice which handles these matters.

Perhaps anticipating the obvious response that evidence beyond that offered by the prosecution at trial was irrelevant to the charges in the indictment, the Morgan Report states that the prosecutor "personally framed the indictment and thereby fixed the limits of the

testimony needed to prove the offenses they charged" (p. 38) and that the indictment had been so framed that detailed evidence was offered "to demonstrate not the ultimate paying authority for the adventure but in order to prove the guilt and motive of the defendants." (P. 34) It is true that the indictments were framed to comport with the evidence we had available to prove the guilt and motive of the indicted defendants at trial. Any other course of action would have been wholly improper. ABA Minimum Standards, The Prosecution Function, § 3.9(a),(e). It is hard to believe that, submitted in behalf of the ACLU, the Morgan Report would suggest otherwise.

H. Response to Criticism for Not Calling as Witnesses for the Government at Trial, The Five Defendants Who Pled Guilty

11. The Morgan Report is critical of the prosecutors for failure to call as witnesses the five defendants who pleaded guilty during the trial. (P. 74)

Reliance on accomplices as witnesses at a trial of codefendants always poses certain obvious trial risks to a prosecution. In this case the Government was already relying heavily on the testimony of Baldwin and Gregory, lower level operatives in the hierarchy of the conspiracy, both of whom were cooperative witnesses. With the aid of their testimony and other powerful evidence of the defendants' guilt, it was my judgment that the testimony of those who pleaded guilty was not needed to attain our sole and only legitimate goal: conviction by the jury of Liddy and McCord.

In addition, calling the defendants may have been detrimental to the Government's case since they never agreed to cooperate with the prosecution. Repeatedly during the investigation we tried to elicit the cooperation of the defendants, particularly Liddy, Hunt and McCord. We were rebuffed on every try and confronted with a wall of silence. For example, when called to the grand jury, Liddy, Hunt, and McCord asserted their Fifth Amendment privilege against

self-incriminnation. 7/ It was impossible to approach the Miami defendants since they were all represented by the same counsel. Although we seriously doubted that they had any valuable information concerning the genesis and purposes of the conspiracy beyond Liddy's role (and that was limited), throughout the investigation we moved the court to appoint separate counsel. All motions, written and oral, were denied. Under no circumstances, therefore, particularly given the strength of our case, would we have violated one of the cardinal rules of trial lawyers - never call a witness unless you know what his testimony is going to be, above all, when you do not need him. Our judgment proved sound. For when, as we had planned, we called the five who pled guilty before the grand jury after the trial and granted them use-immunity, all five, particularly Hunt, initially lied repeatedly in response to questions concerning involvement of others and receipt of money during the investigation and continued to lie until we had accumulated sufficient evidence to establish that they were lying and confronted them with it.

The Morgan Report at least implies that the prosecutors did not call the defendants who pled guilty at trial because we preferred the secrecy of the grand jury room where all proceedings would be in our "discretion." (Pp. 61, 64) The preceding paragraph explains our reasons for not calling them at trial. The Morgan Report apparently assumes that at the trial of Liddy and McCord we could have questioned those who pled guilty about the involvement of others. It thus apparently misconceives and has confused the function of a criminal trial and an investigating grand jury. See American Bar Association Project on Standards for Criminal Justice, The Function of the Trial Judge, § 1.1(a). By implying that the post-trial grand jury questioning of those who pled guilty

---

7/ Even in negotiating a plea with Hunt, his attorneys had advised us that Hunt would not cooperate and testify for the Government in its case-in-chief, but he did agree that if Liddy testified in defense that he was acting only as Hunt's attorney, the defense Liddy's counsel told us he planned to raise, Hunt agreed to waive any attorney-client privilege he had with Liddy and testify in rebuttal that with respect to the offenses charged in the indictment, Liddy was not acting as his attorney.

would be curtailed, the Morgan Report has also without justification challenged not only the integrity of the prosecutors but also the integrity and intelligence of the twenty-three members of the Watergate grand jury.

The Morgan Report criticizes the plea agreement entered into between the prosecution and Howard Hunt and later made during the trial with four Miami defendants and claims that for those who pled guilty we did not oppose low bail pending sentencing. (P. 55) Again, this criticism made in behalf of the ACLU is most surprising.

Under the plea agreement, Hunt, a person with no prior criminal record, was pleading guilty to three of six counts for which he was indicted, to 25 of a maximum 35 years to which he could be sentenced. Moreover, by pleading guilty to the conspiracy count which specifically incorporated by reference as overt acts all the counts in the indictment, Hunt was in fact acknowledging his guilt of the charges in the remaining counts of the indictment. In addition, this plea was entered without any commitment on the part of the Government concerning the sentence it would recommend (and later the Government did recommend that Hunt be imprisoned); Hunt was also advised that subsequently he would be compelled to testify before the grand jury under a grant of use-immunity concerning his knowledge of the involvement of others, and Hunt agreed to testify for the Government in rebuttal if Liddy claimed as a defense he was acting as Hunt's attorney.

This last was not without some importance. Our case against Liddy was very strong. Nevertheless, since this was the only defense his attorney advised us he planned to raise, it was important, if necessary, to be able to rebut it. For of the Watergate Seven, Liddy was the boss, and although we planned to place all seven defendants before the grand jury after conviction, it was my view that Liddy, by virtue of his position, would be the one who would know whether others were involved. This, of course, has proved correct since the four Miami defendants had nothing to offer, and both Hunt and McCord had only hearsay information from Liddy.

The same plea agreement - without rebuttal testimony - was made with the four Miami defendants. The Morgan Report alleges that we did not oppose low bail pending sentence and appears to approve the $100,000 bail set by Judge Sirica based on the facts known at the time. (P. 55) At the time of the plea, Sturgis was on $50,000 bail with surety, Barker $40,000 with surety, and Martinez and Gonzalez had placed a ten percent deposit on $40,000 bail. We had opposed their release on bail throughout the investigation. It would seem at least dubious that the ACLU would really consider this low bail. It would seem particularly dubious that the ACLU would urge $100,000 bail pending sentence for these four Miami defendants.

The Morgan Report criticizes the prosecutor's failure to object to low bail for Hunt pending sentence, emphasizing as factors Hunt's role in the Ellsburg burglary and knowledge of forgeries to implicate a former American President in the assassination of Diem. (P. 61) This is hindsight with a vengenance since it is common knowledge that we did not know of these facts in January, 1973. Moreover, Hunt's wife had been killed in an airplane crash one month before his plea. Considering that at our insistence he had surrendered his passport, had always shown up when required, and wanted an opportunity to make arrangements for care of his four children, one retarded, one only nine years old, it is difficult to understand how our failure to insist on raising the $10,000 bond he was already on can be questioned. 8/

8/ Mr. Morgan criticizes Mr. Silbert and Mr. Glanzer for not advising him on December 22, 1972, when we met, that Hunt intended to enter a plea of guilty, a fact which he erroneously alleges we must have known. (P. 81, n.1) The fact of the matter is that Hunt's counsel did not make any offer or suggestion of a plea until January 4, 1973. The plea was not agreed upon until the evening of January 6, 1973.

I. Response to Criticism for Attempting to Introduce Into Evidence Contents of the Illegally Intercepted Telephone Conversations

12. The Morgan Report criticizes the attempt of the prosecution to introduce the contents of the illegally wiretapped conversations into evidence, alleging that this was in clear violation of the law. (Pp. 71-72, 76-77) The prosecution most assuredly wanted to elicit from Baldwin [redacted] b3 generalized, non-specific descriptions of these conversations to corroborate his uncorroborated testimony that telephone conversations we alleged were intercepted were [redacted] 9/ to help authenticate the identity of these conversations, and to help establish motive. We do not agree that introduction of these intercepted conversations at trial to help prove the commission of the offense of unlawful interception was illegal. Chief Judge Sirica ruled in our favor on this issue and wrote a reasoned, well-researched opinion. The Court of Appeals reversed by a split decision. The majority did not write an opinion. I continue to believe that Judge Sirica, the appellate dissent, and the prosecutors were correct. 10/

J. Response to Criticism Concerning Prosecutors' Suggestion of Political Blackmail as a Possible Motive

13. The Morgan Report criticizes the prosecutors for seeking to introduce evidence of blackmail of R. Spencer Oliver as the motive for E. Howard Hunt's participation. (Pp. 70-71, 79-83, 90-98) This criticism misstates our position.

9/ This would have been done by having Baldwin testify as to the contents of the conversations and identify them by date and then have the participants to the conversations corroborate his testimony by stating that they had had such a telephone conversation as described by Baldwin.

10/ Attached to this memorandum is a copy of our appellate memorandum supporting the admissibility of this evidence and Judge Sirica's opinion upholding our position. (Appendices C and D, respectively).

We never were able to determine the precise motivation for the burglary and wiretapping, particularly on the telephone of a comparative unknown - Spencer Oliver. Baldwin had told us that McCord wanted all telephone calls recorded, including personal calls. They were, many of them being extremely personal, intimate, and potentially embarrassing. We also learned that Hunt had sometime previously met Spencer Oliver at Robert R. Mullen Co. and opposed his joining the firm because he was a liberal Democrat. Therefore, one motive we thought possible was an attempt to compromise Oliver and others, but so far as Hunt and Liddy were concerned, for political reasons, not for the money (as the Morgan Report suggests (p. 31)). We never had any direct proof of this since neither Hunt or Liddy, despite our continuing efforts, would talk to us. It was, therefore, only an inference based on the above facts. We did think McCord was in this at least partially for the money. For our examination of his bank records [illegible] that without the three $10,000 cash deposits in one hundred dollar bills [illegible] April to June 12, 1972, presumably money for the Watergate operation, his business - McCord Associates - would have been hopelessly in debt.

As far as the four Miami defendants were concerned, we did offer, as the Morgan Report acknowleges (p. 75), evidence of Barker's political motive, particularly his opposition to Senator McGovern. Because Barker was not on trial, having pled guilty, and the comparative remoteness of the evidence, Judge Sirica excluded this evidence. (Trial transcript, pp. 1796-1803). Based on our investigation of their financial situations - the results of which were explored at trial - and the very generous pay they were receiving for their planned week end's work (Gov't. Exhs. 43-E&F, introduced at trial), the evidence, in our view, supported the inference that besides the political motive, the Miami defendants also had a financial incentive, despite their protestations to the contrary.

As mentioned in the preceding response one of our purposes for seeking to introduce limited portions of the intercepted conversations was to establish motive, or more precisely, to provide the jurors with a basis upon which they could infer a motive if they chose to do so. Political blackmail was, in our view, a possible motive and our only interest in the defendants' interest in highly personal, intimate aspects of the intercepted conversations.

The Morgan Report alleges with great detail, the process by which we purportedly developed the motive of blackmail "to present a non-political and fictitious motive for the crime," and thus to help limit the blame for Watergate to Liddy and Hunt. (Pp. 69-82, 89-104) This allegation is so preposterous that any response beyond that of a flat denial would give it a legitimacy it does not deserve. 11/

K. Response to Alleged Extreme Concern of the Prosecutors over the Role of the CIA in the Watergate Case

14. The Morgan Report states that the prosecutors asserted that references to the CIA in the typed transcript of the Los Angeles Times interview with Alfred C. Baldwin, III were typographical errors. The Report implies that the reason the prosecutors made this assertion was their "extreme concern over the role of the Central Intelligence Agency in the Watergate case and related matters." (Pp. 41-42)

11/ The Morgan Report states (pp. 56, 81) that the prosecutors were free to develop evidence of any motive they chose since it was "expected" that Liddy, Hunt and McCord would not testify at trial. This is wholly wrong. As mentioned previously, no plea was discussed with Hunt's counsel until January 4, 1973, and no agreement reached until January 6, 1973. We did not learn that Liddy and McCord would not testify until after the close of the Government's case-in-chief. If Mr. Morgan is correct that we knew the defendants were not going to testify, Mr. Glanzer and I wasted an incredible amount of time pretrial preparing our cross-examinations of Liddy, Hunt, and McCord.

This is not so: we had not the slightest evidence at the time of the trial to believe or suspect that the CIA was involved in the Watergate matter. At the very start of the investigation, because of the CIA association of a number of the defendants and their ties to Cuba, we did speculate as to whether the Watergate break-in had some connection with the CIA. Initial inquiries to CIA by the FBI, however, so far as we knew, drew an entirely negative response.

Despite the negative response, Seymour Glanzer, based on his experience in a prior case he had handled, his knowledge of other cases, and his litigating skill, suggested that as a defense to this case - particularly in view of the strong evidence we were amassing - the defendants might raise a phony CIA defense, that is, they might falsely claim that the Watergate break-in was a CIA sponsored operation. Pursuant to Mr. Glanzer's suggestion and only to prepare to rebut this possible defense, did we request information from CIA concerning any recent [illegible] and did [illegible] all of the [illegible] did Mr. Glanzer, Mr. Campbell, or myself ever know for a fact that the defendants were actually contemplating such a defense. Moreover, our inquiries to the CIA at that time - November and December, 1972 - provided no basis at all for suspecting CIA involvement in Watergate. In fact the CIA made a commitment to the prosecution that they were willing to take the stand at the trial in rebuttal if such a defense were raised and deny any involvement under oath. 12/

12/ The Morgan Report suggests that after fleeing to California, Hunt may have gone to Mexico City, linking that possibility with the Mexican checks and the trip of his California attorney and friend Morton B. Jackson there. (P. 40) The link has no basis. We did learn during the initial grand jury investigation that after Mr. Jackson left California to go to Mexico City, Hunt left Los Angeles for about four days, where we did not know. After his conviction and sentence, Hunt informed us that he had gone to Florida. As far as I know to this date, there is no connection whatsoever between the Mexican checks and Mr. Jackson and Howard Hunt.

(Footnote continued on the next page.)

L. Response to Criticism that Prosecutors Did Not Have Tap of Which Baldwin Told Them Removed From Spencer Oliver's Telephone and Accepted Tap Discovered on His Telephone as One Placed There After Watergate Arrest

15, 17. The Morgan Report alleges that the prosecutors failed to cause the removal of a live tap from the telephone of R. Spencer Oliver, Executive Director of the Association of State Democratic Chairmen, despite our having learned from Alfred C. Baldwin, III of the existence of the tap six months prior to its discovery. The Report also alleges that I allowed the Attorney General and other Republican politicians to insist that Oliver had for some reason tapped his own telephone. (Pp. 63-67)

In fact, I was never aware that either the Attorney General or other Republican politicians were so stating. 13/ Even if I had been, I rather doubt that I could have done anything about it. Certainly as the prosecutor in charge, I was not about to and never did make any public statement concerning the Watergate case while that investigation was in progress or the case was pending trial.

12/ (Continued) The Morgan Report asserts (p. 42, n.2) that my sensitivity to any reference to CIA is demonstrated by my categorization as irresponsible Mr. Morgan's request to the Court that the Government prove that the Watergate wiretap was not government initiated, the implied allegation in context being, as I recall, that it was CIA initiated. In the absence of any evidence to support such an allegation, I believed then and I still believe now that it was irresponsible. Certainly the material in the Baldwin tape provides no basis in fact whatsoever for any allegation or insinuation that the Watergate tap was CIA initiated. Moreover, to my knowledge, there was not during the trial of McCord and Liddy nor is there at present any basis in fact for believing that the Watergate tap was CIA initiated.

13/ The references cited by the Morgan Report (pp. 65-66) are to out-of-town newspapers which I was not reading during this period of time.

I was aware, however, that the FBI viewed the recovery of the tap from Mr. Olver's telephone as a separate offense, unrelated to the Watergate burglary and wiretap. As a number of Special Agents from the Washington Field Office could verify, I repeatedly informed them that I did not accept this theory, and upon receiving what I considered to be reasonable complaints from Mr. Olver about the investigation into his life being conducted by the FBI, interceded with the Agents and tried to limit the scope and nature of their questioning. Finally, when the FBI presented their report to me of a new offense with unknown subjects, I immediately sent a memorandum to Mr. Petersen which set forth my disagreement with the entire approach of the FBI and the reasons for my opinion that the tap recovered from Mr. Oliver's telephone was the one on the telephone when Baldwin was intercepting Mr. Oliver's telephone calls. Thus, Mr. Morgan's allegation (p. 66) that I never disputed the theory of a new offense is completely inaccurate.

M. Response to Allegation That in Obtaining Copies of Dean's Papers, Prosecutors were Acting for White House to Assist President Nixon in Preparation of his May 22, 1973 Statement

16. The Morgan Report states that the prosecutors "sought and obtained for pre-May 22, 1973 use by Mr. Nixon, copies of documents in the possession of John W. Dean, III." (P. 54) When Mr. Dean filed his interpleader-type motion concerning the documents, there never was any question but that the Executive Branch of Government, to which the papers undeniably belonged, was entitled to the recovery of at least a copy of them. Moreover, we had no contact with the White House. We did not know what was in the documents. We did not know of the preparation of the May 22nd statement until it was released. To assert, therefore, that we obtained the documents for the White House is unfair and inaccurate.

The important fact, omitted by the Morgan Report, is that we obtained the documents for our investigation..

N. Response to Criticism for Not Obtaining Copy of Results of Dean's Investigation into Watergate

18. The Morgan Report criticizes the prosecutors for failing to procure from Mr. Dean a copy of the results of his White House investigation, noting that we were not subject to a claim of executive privilege. The litigation and controversy between the Special Prosecutor and the White House over the tapes and documents should dispel any notion that the grand jury was not subject to at least a claim of executive privilege or that a prosecutor could have for the asking any White House document he desired.

O. Response to Allegation That Prosecutors [illegible] Jury Proceedings relating to Contents of Intercepted Telephone Conversations

19. The Morgan Report alleges that the prosecutors continued to elicit contents of wiretapped conversations before the post-trial grand jury despite a contrary order of the United States Court of Appeals. This is inaccurate. The Court of Appeals order to which the Morgan Report refers, addresses itself only to the introduction of this evidence at the trial of Liddy and McCord in Criminal Case No. 1827-72. It had nothing to all to do with the post-trial grand jury proceedings. Nevertheless, the prosecutors were most cautious in the use of this evidence, referring to it only to assure that reports of telephone conversations which Sally Harmony now claimed to remember were in fact the logs of those Baldwin had intercepted.

P. Response to Criticism that the Return of the Original Indictment was Delayed.

20. The Morgan Report appears to allege that the return of the indictment was delayed until

September 15, 1972, although five of the Watergate defendants had been arrested "red-handed" as early as June 17, 1972. (P. 7) This allegation, of course, is flatly inconsistent with the Morgan Report's criticism of the investigation as not being thorough enough, particularly its harping on the fact that Magruder's former administrative assistant was not interviewed. (Pp. 54, 60, 82, n.1) The Report cannot have it both ways: an almost immediate indictment and the most exhaustive investigation conceivable. The two are mutually exclusive.

One can imagine the uproar and accusations had an indictment been returned only against the five arrested shortly after the arrest with preparations for trial and skillful defense work inevitably interferring with the progress of the investigation until after the election. Instead we correctly determined to follow out all investigative leads, always aware of the tremendous outside pressure to return indictments as soon as possible. Once it became clear that the evidence would stop at Liddy, our strategy became to build our case against the Watergate Seven, indict and try them, and then, after granting them use-immunity, compel their testimony post-trial before the Watergate Grand Jury.

In mid-July it is true as a technical legal matter that based on Baldwin's testimony, an indictment could have been returned against Hunt and Liddy as well as the five arrested on June 17th. No responsible prosecutor, however, would or could have ended the grand jury investigation at that point. For the case against Liddy and Hunt would have rested almost exclusively on one accomplice - Baldwin - and innumerable investigative leads would have remained unpursued. Had the suggestion been made to return an indictment then, I would have categorically rejected it. As it was, when allegations of delay did begin to appear in the news media toward the end of August, Henry Petersen told me that Mr. Kleindienst was hoping indictments could be returned by Labor Day. Even at that time I told Mr. Petersen that this could not be done, that there was too much to do. In fact,

between September 7 and September 15, 1972 the day on which the indictment was returned, nine witnesses testified before the grand jury, including John Mitchell, and, for the third time, Jeb Magruder.

Q. Response to Criticisms for Not Requiring Maurice Stans to Testify Personally Before the Grand Jury and Not Calling Mr. Stans or Mitchell as Witness at Trial, and Not Asking Adequate Questions at Trial

21. The Morgan Report criticizes the fact that Maurice Stans did not appear personally before the grand jury. (P. 38) The facts to my knowledge are as follows:

On Friday, July 29, 1972, I directed the FBI to serve a grand jury subpoena upon Maurice Stans to appear before the grand jury the following Tuesday, August 1, 1972. That evening, counsel for the Committee for the ReElection of the President, at an emergency meeting he requested, strongly objected to the proposed grand jury appearance of Mr. Stans, stating it would harm his fund raising efforts. At his request, we changed the date of his appearance to Wednesday, August 2, 1972, but explained he would have to appear.

After the meeting, Mr. Campbell, Mr. Glanzer, and I discussed the matter among ourselves. One aspect we discussed was the appropriateness of serving a subpoena on a person such as Mr. Stans, a former cabinet officer, as opposed to inviting him to appear, the procedure ordinarily followed with Senators, Congressman, and other public and private officials who upon invitation would be expected to appear. More importantly, we discussed the potentially harmful affect on our investigation by what would inevitably be a highly publicized appearance at the grand jury by a person as well known as Mr. Stans. The mounting publicity in this case, we were concerned, might hinder the investigation and would very likely provide the

defendants with a basis for delaying the trial, a highly undesirable result in view of the enormous pressures on us to bring the case to trial as quickly as possible. We reviewed as precedent the case of United States v. Sweig, 441 F.2d 114, 121 n.7 (2d Cir.), cert. denied, 403 U.S. 932 (1971) in which former Speaker John McCormack did not appear before the grand jury but was deposed in his own office during a criminal investigation which was focusing on members of his staff, once with his nephew present. We reached no final decision that evening.

During the week end, I was informed by Henry Petersen that he had received a very strong complaint from John Ehrlichman of the White House about the potentially unfair and prejudicial publicity generated by appearances of White House staff members and former cabinet officers before the grand jury at the United States Courthouse.

After a meeting on Monday, July 31, 1972, of then Attorney General Richard Kleindeinst, Mr. Petersen, and myself in which this and other aspects of the Watergate case were discussed, it was subsequently agreed that well known persons such as Mr. Stans and White House staff members whose testimony was sought by the grand jury would be examined by an Assistant United States Attorney in the offices of Mr. Petersen at the Department of Justice. It was agreed that this examination would be under conditions duplicating as nearly as possible examination before the grand jury: testimony under oath in question and answer form, in the presence only of an Assistant United States Attorney and a court reporter who would record the proceedings. The witness could be accompanied by counsel. As before a grand jury, however, counsel was not permitted to be present during the examination but instead would be available in a nearby room to confer with the witness if the latter so desired. After the examination, the transcript of the proceeding prepared by the court reporter would be submitted to the grand jury.

I informed the grand jury of this arrangement and that the testimony of these witnesses would be read to them in its entirety. I also advised the grand jury that if there were further questions they believed should be asked the witnesses, the witnesses could be further examined pursuant to the above-described arrangement or before the grand jury itself.

This procedure was followed for Mr. Stans and four members of the White House staff: Charles Colson, his secretary Joan Hall, David Young, and Egil Krogh. The transcripts of their depositions were read to the grand jury. The grand jurors neither requested that additional questions be asked of these witnesses or that they appear before them personally for further questioning.

Towards the end of August and early September, the plaintiffs in the civil suit of Democratic National Committee v. McCord, et al., Civil Action No. 1233-72, were taking depositions of well know persons such as Mr. Stans and John Mitchell. These depositions were highly publicized and the deponents were contributing to the publicity by making statements to the press. In view of this publicity, our original goal of trying to minimize the publicity was no longer capable of achievement. Moreover, the witness could not justifiably complain of publicity when he was contributing to it. I therefore observed to Henry Petersen that those witnesses should not be excused from appearing before the grand jury, an observation concerned in by members of the grand jury. Mr. Petersen agreed. The one well known public figure who remained to be questioned was the most controversial of all - John Mitchell. Nevertheless he appeared in person before the grand jury as did other persons who had been the subject of extensive publicity during the investigation such as Kenneth Dahlberg and Dwayne Andreas.

The Morgan Report also alleges that the prosecutors failed to place either Mr. Stans or Mr. Mitchell on the stand to testify concerning their authorization of payments to Liddy and that because of our narrow questions, Judge Sirica was forced into an active "inquiring role." (P. 56)

I recall only two instances of Judge Sirica asking questions on his own.

[redacted]

The important fact here, though, is that this was absolutely not an area ignored by the prosecutors.

The second instance involving questioning by Judge Sirica occurred during [redacted] (Trial transcript, p. 1462). It is this response, [redacted] that we are criticized for not doing.

We did not bring out this information because apart from the hearsay nature of at least part of this response and at best its remote relevance to the guilt or innocence of Liddy or McCord, this answer of Sloan at trial was inconsistent with what we had previously been told by a number of witnesses, including Sloan himself, when we explored this matter during the grand jury investigation. During the investigation Sloan stated that he discussed the matter with Magruder and Stans, and Stans said Magruder's

authorization was good enough for him. Sloan never mentioned any verification with Mitchell. Secretary Stans went further: he stated that he knew vaguely that Liddy was working on security for the San Diego convention and that the one time Sloan asked him about a disbursement to Liddy, he told him to check with Jeb Magruder because it was his responsibility. These statements were corroborated by Magruder who took sole responsibility for the Liddy authorization, stating that Mitchell had only general information that Liddy was attending to convention security. Mr. Mitchell's account during the initial grand jury investigation was to the same effect - he did not, prior to June 17, know of the $250,000 authorization.

Thus we had thoroughly explored the responsibility for the Liddy $250,000 authorization with the appropriate persons in the appropriate forum - the grand jury investigation. Neither Mr. Stans nor Mr. Mitchell, accordingly, were called to testify at trial concerning the payments to Liddy because based on their own sworn testimony and that of others during the grand jury investigation, they did not authorize the payments and had at most hearsay knowledge of their authorization, occurrence and purpose.

A

REPORT
to the

SPECIAL PROSECUTOR
on

CERTAIN ASPECTS
of the

WATERGATE AFFAIR

This report has been prepared by:

Charles Morgan, Jr.
Director
Washington National Office
American Civil
Liberties Union
410 First Street, S.E.
Washington, D.C. 20003

and is submitted for the ACLU and as attorney for the:

Association of State
Democratic Chairmen
1625 Massachusetts Ave.,
Washington, D.C. 20036

ENCLOSURE
SERIAL 2725

The ACLU entered the Watergate Case at trial to protect the rights of privacy of the victims of the crime.

This report is submitted on its behalf and on behalf of its clients, members of the Association.

Throughout the case, the ACLU has maintained a continuing interest in the rights of the victims of the crime and the rights of those charged with its commission.

As a result of this, its position concerning the secrecy of "raw" FBI files has been endorsed and relied upon by the White House. The interest of the ACLU in matters herein reported arises from its dedication to the principle of equal justice under law and the proper administration of criminal justice. The interest of the Association is the natural interest of the victims of the crime who seek impartial justice.

Filed June 18, 1973

Introduction

American justice has been victimized by "a very profound kind of corruption."[1] At the center of that corruption were those in the White House. But outer limits of that corruption await definition.

Special Prosecutor Archibald Cox has been selected to restore the people's faith in the "honesty and integrity and decency of government."

The discharge of this duty requires the conduct and the appearance of an aggressive and impartial investigation; the conduct and the appearance of an aggressive grand jury investigation resulting in even-handed indictments; and the conduct and the appearance of fair but aggressive prosecutions against those indicted.

The appearance of independence depends ultimately, of course, on the exercise of actual independence by the Special Prosecutor. It is in the discharge of his duties that the faith of the people in the "honesty and integrity and decency of government" will be restored if, in fact, it is to be restored.

The thrust of this Report is that the Special Prosecutor, in the earliest stage of his tenure, should take steps designed to assure the public that he has employed an absolutely impartial and independent staff.

---

1. Washington Post A-8, col. 2, June 12, 1973, quoting a Letter from Harold Titus, Jr., Earl J. Silbert, Seymour Glanzer and Donald E. Campbell to [illegible]. Dean, III, May 22, 1973.

It is believed that this can be accomplished by:

1. The employment and use of only non-Justice Department legal personnel and, whenever possible, the employment and use of investigative personnel not subject to government career considerations and, in no instance, obligated to report to Departmental or Federal Bureau of Investigation supervisors.

2. Effecting a clean break with the past by publicly declining to further use the personnel of the office of the United States Attorney for the District of Columbia.

Additionally there should be an immediate review of the law and the facts regarding the prosecution and trial of the Watergate Case to determine whether the seven previously obtained convictions should be set aside on motion of the Special Prosecutor. If so, re-prosecutions should be thereafter commenced under an indictment which includes all pre-Watergate conspirators within its scope.[1]

---

1. The American Civil Liberties Union believes that the first trial having been a sham, its results should be set aside. The Association of State Democratic Chairman has taken no position on this aspect of this report.

Two of these convictions were obtained on the basis of perjured testimony and a consequent withholding of possibly exculpatory evidence.

Five convictions were obtained upon guilty pleas and appear to have been purchased or coerced or were accepted as the result of fraudulent misrepresentations made to and relied upon by the Court in its acceptance of the pleas. Thus, regardless of the desires of these defendants, their guilty pleas must be set aside. The integrity of the judicial system and its extrication from fraud demand this.

The Special Prosecutor and the Court have an independent obligation to cause this.

As the Supreme Court said in Berger v. United States, 295 U.S. 78, 88(1935), the sovereign's "...obligation to govern impartially is as compelling as its obligation to govern at all..." and its interest "in a criminal prosecution is not that it shall win a case, but that justice shall be done."

(footnote continued on following page.)

The American Bar Association Code of Ethics places a heavy responsibility on the shoulders of a public prosecutor whose special duty is "to seek justice," "impartial justice." Professional Responsibility: Report on the Joint Conference, 44 A.B.A.J. 1159, 1218 (1958). As the Supreme Court put it, in Berger v. United States, 295 U.S. 78, 88 (1935):

> The United States Attorney is a representative not of an ordinary party to a controversy but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all.

(Footnote continued from previous page) Thus, the Government has an obligation to disclose to criminal defendants exculpatory evidence in its possession. Brady v. Maryland, 373 U.S. 83 (1963). Even though it does not solicit false testimony, it similarly has an obligation to correct false evidence given by its own witnesses for whose credibility it vouches. Napue v. Illinois, 360 U.S. 264, 269 (1959). See also Mooney v. Holohan, 294 U.S. 103 (1935). Reversal of the conviction is required where the Government does not disclose evidence affecting the credibility of a material witness. Giglio v. United States 405 U.S. 150 (1972). When a Government witness believably recants material testimony, a new trial is also required. Newman v. United States, 238 F.2d. 861 (5th Cir. 1956); United States v. Miller, 61 F. Supp. 919 (S.D. N.Y. 1945); Larrison v. United States, 24 F. 2d 82 (7th Cir. 1928).

Coerced pleas of guilt, whether obtained by threats, duress or promises, cannot stand. Walker v. Johnston, 312 U.S. 275 (1941); Waley v. Johnston, 316 U.S. 101 (1942). Since those who desire to plead guilt have no constitutional right to have their pleas accepted, Santobello v. New York, 404 U.S. 257 (1971), Lynch v. Overholser, 369 U.S. 705 (1962), they acquire no right to have their pleas enforced when their acceptance was procured by a fraud on the Court.

The proposed course of action would not implicate the double jeopardy clause. Even where trials have been aborted prior to verdict, thus depriving defendants of a possible acquittal, the Court has allowed them to be retried where interruption of the trial was occasioned by governmental misconduct or where "the ends of public justice would not be served by a continuation of the proceedings." United States v. Jorn, 400 U.S. 470 (1971). Here the defendants will not be deprived of their opportunity for acquittal and will not be legally harmed by a new trial, free from the taint of dishonestly procured guilty pleas. Cf. North Carolina v. Pearce, 395 U.S. 711 (1969).

The factual basis for this action is set forth in this Report.

Thus, consideration should be given to the following aspects of the Watergate Trial, a trial conducted under the indictment the prosecutors chose to draw.

1. The indictment included no counts for "disclosure" of the illegally wiretapped conversations under Title III of the Omnibus Crime Control and Safe Streets Act of 1968, counts which inevitably would have required inquiries about the ultimate recipient of the reports of the taps.

2. The above-mentioned reports were not tracked to these ultimate recipients.

3. The prosecutors failed to call John W. Dean III to testify about White House actions regarding the contents of E. Howard Hunt's safe. Indeed, John W. Dean III was not called to testify at all.

4. The prosecutors ignored information brought to them by a Washington D.C. attorney regarding eight cartons of documents, including "plans to bug the Watergate," taken from E. Howard Hunt's White House safe.

5. The prosecutors protrayed G. Gordon Liddy as the man with ultimate responsibility for the crime when there was every indication to the contrary.

6. The prosecutors called Jeb Stuart Magruder to testify as to how much money there was and where it had gone, after Hugh W. Sloan had placed them on notice months before, in discussions and in grand jury testimony, that Magruder had sought his false testimony.

7. The prosecutors even failed to interview Mr. Magruder's administrative assistant, Robert A.F. Reisner.

8. A prosecutor argued in closing that;

> He [Mc Cord] and Liddy were off on an enterprise of their own. Diverting that money for their own uses. TR. 2066

9. The prosecutors failed to secure an immediate search of James W. McCord's nearby Maryland residence, or his place of business.

10. The prosecutors failed to offer chain-of-proof evidence of the ultimate source of the Mexican checks.

11. Those who pleaded guilty were not called as witnesses against the two remaining defendants.

12. The prosecutors persistently attempted to introduce the contents of the illegally wiretapped conversations into evidence, in clear violation of the law.

13. The prosecutors persisted in seeking to introduce blackmail of R. Spencer Oliver as the motive for E. Howard Hunt's participation.

14. The prosecutors asserted that references to the C.I.A. in the typed transcript of the Los Angeles Times interview with Alfred C. Baldwin III were merely typographical errors.

15. The prosecutors failed to cause removal of a live tap from the telephone of R. Spencer Oliver, Executive Director of the Association of State Democratic Chairmen, despite their having learned from Alfred C. Baldwin III of the existence of the tap two months prior to its discovery.

16. The prosecutors sought and obtained for pre-May 22, 1973 use by Mr. Nixon, copies of documents in the possession of John W. Dean III.

17. The prosecutors took no steps to correct public misstatements of fact made by their superiors.

18. The prosecutors, themselves not subject to a claim of executive privilege, failed to procure from John W. Dean, III, a copy of the results of his White House "investigation."

19. The prosecutors, after trial and despite the entry of a contrary order by the Court of Appeals, continued to elicit contents of wiretapped conversations before the post-trial grand jury.

20. Indictments were not returned until September 15, 1972 although five of the Watergate defendants had been arrested as early as June 17, 1972.

21. The prosecutors failed to require Maurice Stans to appear before the Grand Jury, and they failed to call him and John N. Mitchell as trial witnesses.

22. The use of testimonial immunity to obtain prosecution evidence was limited.

23. There was no settlement of the conflict between E. Howard Hunt and the White House about when Hunt left the employ of the White House.

* * *

In the early morning hours of June 17, 1972, Frank Wills, a 24-year old, black security guard in the Watergate Office Building discovered a piece of tape on a basement door-latch. He believed it to have been left there by workmen who had employed it to facilitate their passage back-and-forth, while doing their work.

Mr. Wills removed the tape.

Within the hour, as he passed by the same door, he again noticed a piece of tape across the door-latch.

He did his job.

He telephoned the police.

The disclosures of the next few days became the disclosures of the next few weeks, then months. Slowly the people began to sense, then learn the truth. In seeking the truth, they find their servants taking power at their expense. They find that men in their White House-- not those in power in far-off, totalitarian lands-- are the basic threat to their freedom.

Unlike security guards, lawyers and the ethical discharge of their legal duties have not fared well in the Watergate Case.[1]

The nation's "leading" Lawyer and the President's principal attorney, Attorney General Richard Kleindienst, has resigned; his predecessor, John N. Mitchell, has been indicted; his counsel John D. Ehrlichman and John W. Dean III are under investigation or seeking immunity from prosecution, as are his personal attorney Herbert W. Kalmbach, and Robert Mardian, a former Assistant Attorney General. L. Patrick Gray III, his lawyer-Acting Director of the Federal Bureau of Investigation, resigned after admitting he burned files and destroyed evidence. Mr. Nixon himself is a lawyer, as was the lawyer for his finance committee, George Gordon Liddy, who is now in jail. Some

1. The Department of Justice has given short-shrift to ethical considerations throughout the proceedings. Perhaps the most blatant formal example of its ignoring common conflict-of-interest considerations was in its attempted furnishing of defense counsel to former White House Special Counsel Charles W. Colson to defend him against the Democratic National Committee's civil damage claims. The Department, according to the Washington Post, August 15, 1972:

> contended that the disqualification of its attorney could prevent it from protecting the functioning of the President's staff. "Mr. Colson, as special counsel to the President is, of course, involved in many important and sensitive executive functions", the motion said. "As such, any wide-ranging inquiry on a deposition could well intrude into matters relating to his official duties."

of those lawyers served their client poorly. Others served him too well.

Yet it was in the simple performance of personal duty that young Watergate security guard Frank Wills of the District of Columbia and senior Senator Sam J. Ervin of North Carolina, Bob Woodward and Carl Bernstein, reporters, and Chief District Judge John J. Sirica served their nation.

Each of these men, by the acceptance of personal responsibility, forced others to make decisions and to involve the private and public institutions of democracy in the seeking of truth.

And now the duty of vindicating justice falls to another lawyer, Special Prosecutor Archibald Cox. In the acceptance of his personal responsibility, there lies the hope for all of us. For if the White House was at the center "of a very profound kind of corruption," the disclosure of that corruption has thrust upon Americans the duty to decide, a duty which by the very nature of democratic government belongs to each of us.

With full exposure, there must come a fair but exacting judgment on those who committed the crimes.

If there is no such judgment, "they all do it" will be correct for other men will do it. And it will be easier next time.

Some Reasons for selection of a non-Department [illegible]

The staff prosecutors work with the Grand Jury setting the pace for guiding and overseeing the investigations [illegible] come into the earliest possession of the [illegible] leads. They present their "theory" [illegible] Jury. They select the crimes to be [illegible] the defendants. They write the [illegible] the limits of the trial and the evidence to be offered [illegible] therein.

Here even before the Grand Jury [illegible] they and their lawyers confer with Mr. Silbert behind [illegible] doors. He then presents them to the [illegible] ordinarily does most of the questioning [illegible].

It was between his office and the [illegible] lawyer for Messrs. Ehrlichman and Haldeman scurried. It was to the office of Earl J. Silbert that former CIA Director Richard Helms was whisked when he landed in Washington. It was to this office that Jeb Stuart Magruder went with his latest story. But it was not to this office that James W. McCord went with his memorandum directed to Judge Sirica, a memorandum which set forth perhaps the best reason for the employment of non-Department personnel:

> Following sentence, I would appreciate the opportunity to talk with you privately in chambers. Since I cannot feel confident in talking with an FBI agent, in testifying before a Grand Jury whose U.S. Attorneys worked for the Department of Justice, or in talking with other government representatives, such a discussion with you would be of assistance to me.

Thus, the practical importance of a completely [illegible] secution team at the Grand Jury level seems clear:

a. Prospective witnesses and fearful sources — many of whom have apparently felt more secure with newspaper reporters than prosecutors — would be assured that no Justice Department personnel would be privy to their conversations.

b. Grand Jury, Senate Select Committee and [illegible]

action deposition witnesses whose testimony will be directly contradicted by other witnesses would have the further assurance that independent lawyers would be evaluating their sworn testimony to see who, if anyone, should be prosecuted for perjury.

c. The faith of the people in the impartiality of the criminal investigative process could be restored. And, after all, it was a lack of faith in that process which made the appointment of the independent special prosecutor necessary in the first place.

The present prosecution staff became hopelessly enmeshed in a sham prosecution no matter who was at fault and no matter whether their previous decisions were made in good faith, they should not be allowed to participate further in prosecutions in the Watergate Case.

A clean and public break with the prosecutorial past is one and probably the sole foundation upon which public confidence in the administration of justice can be rebuilt.

Patterns in shifting sands: some characteristics of the prosecu

Clearly developed prosecution patterns emerged from political and legal strategies effectively employed by a central authority. Designed to prevent public disclosure of the facts of the Watergate case, those efforts were most often facially legal. The primary means to the suppression of full and accurate public knowledge was the law itself--here an argument against prejudicial publicity, there an argument against immunity from prosecution, somewhere else a plea of guilt or the sealing of a deposition.

The stakes of non-disclosure were high; for co-participants in the post-arrest cover-up the threat of pre-election disclosure was the threat--and the only major threat--of loss of the Presidency itself.

To those to whom the morality of politics is akin to the morality of warfare--and there are many of them who are confined to no political party or philosophy--these unlawful acts must have come easily. But from time to time their patterns appear to momentarily shift as personal and political loyalties are cast aside.

It is these kaleidoscopic shifts of loyalty--the casting out of some supporters, the solidifying of support for others--which often seem to cause a break in the patterns. But, after the shifts in loyalty have been recognized, the patterns again emerge. Indeed, they are rational and discernible.

Each inch of legal ground [illegible] no soil has been relinquished until there was as complete discovery as possible. In this context otherwise ordinary and proper legal maneuvers take on a different light.

For example, as a reaction to defendant E. Howard Hunt's October 11, 1972 motion to discover and suppress the documents taken from his office desk and safe, the Government's offer to allow partial discovery on a conditional and reciprocal basis seemed reasonable. But if that reciprocal offer is viewed in the content of an Administration which very much needed to learn what copies Hunt may have retained in order to shape its version of the facts, then ordinary legal maneuvers must be viewed in a different light.

In October of 1972 there may have been great concern as to what, if anything, Hunt had duplicated and retained -- forged documents concerning the assassination of Diem? the file of Ellsberg's psychiatrist? [illegible] from I.T.T. or the Chilean Embassy? Unless the Government knew he did not have these, there must have been a White House desire to know exactly what, if any, copies he had.

Or take, for example, the prosecutor's successful attempt to obtain copies of the documents which John W. Dean, III, had placed in his deposit boxes at an Alexandria, Virginia bank. He lodged his keys with the court. These documents were no doubt necessary for preparation of the President's statement of May 22, 1973. Thus, the Watergate prosecutors found themselves retrieving copies of those documents for White House use. United States v. John Doe, et al. Misc. No. 1827-73, (D.D.C. 1973).[1]

---

1. See Washington Post A-9, col. 1, May 9, 1973:
Commenting on the [illegible], a White House source said, "We want the originals back. They're our papers, Goddammit." The source said that if anyone is concerned 'that we're going to [illegible], we'll let the court hang on to a copy.'
The White House, however, [illegible] for a copy and did not appeal Judge Sirica's [illegible].

See also Washington Post [illegible], col. 2, May 15, 1973:
In recovering [illegible] played a dual role. [illegible] directing the grand jury [illegible] into the Watergate affair, including [illegible] any, possessed in the [illegible] cover-up. On the other [illegible] the Executive Department [illegible] documents [illegible].

Another aspect of this case is the shifting of allegiances and loyalties which is implicit in high-level political-legal intrigue.

The crime was quintessentially political. First it was committed not for the private benefit of its perpetrators. Instead the intended prime beneficiary of each of the original criminal acts was the President of the United States.

The participants were exponents of a philosophy and the [illegible] of their political campaign was the primary exponent of that philosophy.

Their interests varied only in their most immediate political goals. To the Cuban-Americans, the freeing of Cuba was of utmost concern.

Still others may have been concerned about domestic efforts to end the war in Southeast Asia or to subvert traditional American values or, as with [illegible], to do acts of violence against the standard-bearer or his surrogates.

But regardless of their varied approaches to the Pentagon Papers trial, the Vietnam Veterans Against the War, the Democratic Party, the rise of Allende of Chile, and the Castro government, their goals were achievable only through the triumph of one man.

In that perspective their crimes by their standards were at least, in the order of patriotism; at most, acts protected by the law.[1]

The men who fostered the legal, moral and political climate in which these crimes took place are now realigned. Messrs. Colson, Haldeman, Ehrlichman and Nixon move against the former Attorney General Mitchell and John W. Dean III. Dean, with or without Mitchell, [illegible] Stuart Magruder, whose new story no doubt serves Mr. Nixon, his [illegible] with [illegible] proceedings.

1. [illegible] arrests [illegible] Mitchell [illegible] v. [illegible]

These and other loyalties -- old and new -- have overridden the administration of justice. They can do so for only so long as the President retains or appears to retain influence over the prosecution. When that influence has been totally dispelled -- and publicly appears to have been totally dispelled -- conspiracies of loyalty must fail. For these conspiracies feed on the appearance of Presidential prosecutorial power. That appearance of power binds men to fear or hope. And it is that appearance of power which may have helped make purjurers of some otherwise honest men.

These men -- the President's Loyalists -- set about the task of concealing the truth immediately following the Watergate break-in;[1] and in doing so, they established another pattern.

---

1. See e.g. New York Times, 33 col. 4, June 13, 1973:
> On the 29th of June I [Maurice Stans] received an urgent call from Mr. Kalmbach....He said,"I am here on a special mission on a White House project and I need all the cash I can get....[I]t must be in cash, and this has nothing to do with the campaign."

He got $75,000.

Pre-November, 1972: Delay and avoidance of the public eye.

Following the Watergate arrests then described as "bizarre" or third-rate burglary"attempt every effort was made to ridicule the "caper" and delay the truth-finding processes. This continued throughout the campaign.

For example, then Secretary of Health, Education and Welfare, Elliot L. Richardson, according to the Orlando Sentinel, 1-A, cols. 1-6, Aug. 10, 1972:

> said it was "inconceivable" the top-brass of the President's team could have sanctioned the June attempt to bug ....
>
> ....
>
> He said his experience in politics convinces him none of the major officials of the Re-election Committee "could have sanctioned" the attempt to plant listening devices.
>
> "It would have been a stupid thing to do and I do not think that committee is stupid.... Now if they were that stupid, and that is a big if, then I cannot see how they could have been so inept."
>
> ....
>
> "I have in the past been in direct talk where amateurs talk about spying on the opposition, but I have seen them counter-manned," he said.

For example:

a. Indictments were not returned until September 15, 1972, -- 89 days after the red-handed arrests of five of those indicted.[1]

b. Depositions in the Democratic National Committee's ("D.N.C.") civil suit were placed under seal pending the criminal trial and the taking of further depositions cancelled until after the election, ie. after the criminal trial.[2]

c. Trial of the Common Cause civil suit was delayed, the names of contributors during the pre-Watergate funding period provided the plaintiffs as consideration for continuance of the trial date until after the election.

d. Maurice Stans, Chairman of the Committee to Reelect the President successfully avoided testifying before the Grand

---

1. [illegible]

2. [illegible]

Jury and at defendant Barker's Florida State Court trial. Barker was charged with the false notarization of the Dahlberg campaign check (and was found guilty after he presented a technical non-testimonial defense).[1]

e. A consent order to stifle discussion of the case was entered on October 4, 1972.[2]

f. A concerted and successful effort was undertaken to make certain that no Congressional investigations were initiated. A House Banking and Currency Committee inquiry was cancelled.[3]

g. There was a continued denigration of press efforts to disclose the facts.[4]

---

1. It was learned that Stans was questioned in private two weeks ago by federal investigators, outside the grand jury that is probing the break-in.

Stans, sources said, was accorded the somewhat unusual privilege of not having to face the grand jury personally.

Because he is a prominent person, his appearance at the grand jury room might lend heavier publicity to the case, sources said. Thus, he was questioned in what is called a "special" inquiry." It is believed that he gave testimony under oath. Washington Star-News A-6 cols. 1-2, August 18, 1972.

This is discussed more fully elsewhere herein.

2. This consent order negotiated by principal assistant United States Attorney, Earl J. Silbert, and defendant E. Howard Hunt's attorney, William O. Bittman, was so broad that it was attacked as an unprecedented gag order actually prohibiting Presidential campaign discussion of the case. Widespread criticism caused its withdrawal and modification on October 6, 1972.

The order was precipitated by publication in the Los Angeles Times of an interview with Alfred C. Baldwin, III, the Watergate wiretapper-listener who had been granted immunity from prosecution. According to the Washington Star-News October 5, 1972:

> The [Los Angeles] Times reported today that it was called by the U.S. Attorney's office here last night and advised against publishing the Baldwin interview, citing Sirica's order.

According to the Los Angeles Times, October 6, 1972,

> Silbert filed his papers the same day he was informed by attorneys for Alfred C. Baldwin, III that the Times had interviewed Baldwin for a story.
>
> ....
>
> Judge Sirica, who was ill at home Wednesday, signed his order about noon. Shortly thereafter, Silbert -- who the day before had warned Baldwin's attorneys that their client's immunity to prosecution might be revoked if his story was published -- had Sirica's order read over the phone to the attorneys.

3. The Justice Department has thrown its weight [successfully by a vote of 20 - 15] behind efforts to prevent a congressional committee from holding hearings on the "Watergate affair" before the trial of the seven men charged in the case begins. Washington Star-News Oct. 3, 1972.

(footnote 4 is on following page)

4. These were largely successful. The Washington Post continued its extraordinary efforts to find and print the truth. The New York Times and Los Angeles Times followed. The print media with these exceptions did little to investigate the case until the trial in January and thereafter. Not a single network television documentary was produced and of the network news shows The CBS Evening News alone placed emphasis on it. See also Washington Post A 20, col. 1. June 3, 1973:

> Dean has also told investigators and prosecutors that Mr. Nixon, acting with knowledge that a cover-up was occurring, wrote out orders last year relating to Watergate developments in the margins of daily news summaries prepared by the White House staff. The handwritten orders effectively directed Haldeman to counterattack the press in regard to the matters mentioned in the news summaries, sources said Dean told investigators.

Limitations on Investigation

According to the President on October 6, 1972, the Watergate investigation makes the "Alger Hiss investigation look like a Sunday school picnic." As L. Patrick Gray, III, put it, it was "taken under my own wing." It was, to Attorney General Kleindienst:

> one of the most intensive, objective and thorough investigations in many years, reaching out to cities all across the United States as well as into foreign countries.[1]

1. Whittier Daily News, 1, cols. 6-8, Sept. 16, 1972

Of all the formal limitations on an effective prosecution, one of the most effective was the restriction of staff size. With only three full-time lawyers assigned to the case there was little hope of a ranging and in-depth investigation. The shortage of lawyer-time necessarily worked to leave evidentiary stones not merely unturned but, more importantly, unseen. And the extra assistance received from Mr. Titus and others in their office could not have compensated for this. Thus, if well intentioned, three men were commissioned to undertake and oversee the investigation and prosecution of a criminal case which involved personnel of the highest office in the free world; a criminal case which is perhaps the most important in our nation's history.

Besides this small staff, more formal limits were placed on the scope of investigation. "Within a few days" after the arrests, as President Nixon put it in his May 22 statement, he "was advised that there was a possibility of CIA involvement in some way." It seemed "possible" he said "that the investigation could lead to the uncovering of covert CIA operations totally unrelated to the Watergate break-in."

He said he "was also concerned that the Watergate investigation might well lead into the activities of the Special Investigations Unit [the plumbers] itself", about whom, "it was important to avoid disclosure."

Additionally, to place Mr. Nixon's statement - which might charitably be viewed as a partial confession - in its best light, he placed a lower priority on the pursuit of justice in the Watergate case than on other matters. As he put it,

> I wanted justice done with regard to Watergate; but in the scale of national priorities with which I had to deal....

He admitted to having

> instructed Mr. Haldeman and Mr. Ehrlichman to ensure that the investigation of the break-in not expose either an unrelated covert operation of the CIA or the activities of the White House investigations unit - and to see that it was personally coordinated between General Walters the Deputy Director of the CIA, and Mr. Gray of the FBI. ....

Mr. Nixon "asked for, and received" -- he does not say from whom -- "repeated assurances that Mr. Dean's own investigation[1] (which included reviewing files [he does not say whose files] and sitting in on FBI interviews with White House personnel) had cleared everyone then employed by the White House of involvement."

So, the President restricted the scope of the investigation or, as he put it, he opposed "an unrestricted investigation of Watergate" [and] "sought to prevent the exposure of these covert national security activities....I so instructed my staff, the Attorney General and the Acting Director of the FBI."

He

> specifically instructed Mr. Haldeman and Mr. Ehrlichman to ensure that the FBI would not carry its investigation into areas that might compromise these covert national security activities, or those of the CIA.

Thus the President revealed that he had privately placed formal limits on the scope of the investigation. On April 17, 1973 in his "major devlopments in the case" message he publicly announced another privately issued order. He had forbidden his prosecutors use of a weapon which would have made them "better able to gather evidence to strike at the leadership of organized crime and not just the rank and file." He had told the prosecutors not to grant any higher-ups immunity from prosecution in exchange for their testimony about the Watergate Affair.

---

1. Compare: New York Times 33, col. 7, Sept. 12, 1972.
> In another development, the Presidential press secretary, Ronald L. Ziegler, said today that a report on the Watergate case prepared by a White House Aide, John Wesley Dean 3d, would not be [illegible] because it was an "internal study" and because a grand jury and other agencies were investigating the incident.

Query: Did Mr. Silbert, a member of the Executive Branch, seek a copy of this "internal study" and, if so, with what result?" If not, why not?

Thus he further limited the possibility that the Grand Jury would hear testimony which would personally incriminate Mr. Nixon.

His April 17, 1973, message said:

> I have expressed to the appropriate authorities my view that no individual holding, in the past or at present, a position of major importance in the Administration should be given immunity from prosecution.

Certainly aware of the import of his remarks-- he prefaced them with "because of their technical nature, I shall read both of these announcements to the press corps"-- Mr. Nixon turned his words against his policy of 1969.

For example, on April 23, 1969, in a message to Congress he said:

> To achieve his end, the organized criminal relies on physical terror and psychological intimidation, on economic retaliation and political bribery, on citizen indifference and governmental acquiescence. He corrupts our governing institutions and subverts our democratic processes. For him the moral and legal subversion of our society is a life-long and lucrative profession.

And he sought

> a new broad general witness immunity law....

As he then explained this law[1] which placed limits on a witness's fifth amendment rights

> a witness could not be prosecuted on the basis of anything he said while testifying, but he would not be immune from prosecution based on other evidence of his offense.... With this new law, government should be better able to gather evidence to strike at the leadership of organized crime and not just the rank and file. The Attorney General has also advised me that the Federal Government will make special provisions for protecting witnesses who fear to testify due to intimidation.

And, on October 13, 1969, in another message to Congress he stated that

> control and reduction of crime are among the first and constant concerns of this Administration,

urged passage of the D.C.Crime Bill and again

> sought a modern general witness immunity statute under which witnesses in Federal criminal cases could be compelled to testify under threat of a prison sentence for contempt...

---

1. The enactment of which was opposed by the ACLU.

The continuing investigation and a Sunday school exercise.

From June 17, 1972, to February 1, 1973, the prosecution took certain written and other positions, actions and non-actions which seem inconsistent with both a properly aggressive search for the truth and the appropriate discharge of prosecutorial duties.[1]

Harold H. Titus, Jr., the United States Attorney, and his principal assistant, Earl J. Silbert, Esq. were involved in the prosecution from the day of the arrests until today. Mr. Silbert was said to be in charge.

The investigation was "continuing" after being "closed" and perhaps "continuing" and "closed" at the same time.

On September 16, 1972, according to the Department of Justice, the grand jury investigation was "over and there is virtually no prospect of further indictments".[2]

On October 6, 1972 the President referred to "the recently completed Federal investigation of the break-in ...[which] made the 1948 investigation of Alger Hiss look like a Sunday school exercise."[3]

But, to the trial court in January, 1973, Mr. Silbert represented:

> ....There has never been a time when it has not been continuing.
>
> .... That it did not cease, contrary to some with the return of the indictment. Tr. 238
>
> ....
>
> THE COURT: This has been a continuing investigation, hasn't it?
>
> MR. SILBERT: It has, sir.

---

1. Which sometimes were internally inconsistent. See for example Tr. 448 where, when defendant McCord's attorney raised the question of electronic surveillance of his client, the following transpired:

> MR. GLANZER: We have no knowledge of anything like that. We never made any check. We have no knowledge.
>
> MR. SILBERT: As I represented to the Court before, we did make a thorough search with the Department of Justice for any and all communications that may have been overheard concerning any of the defendants in this case and the answer came back that there were none to disclose.

2. Baltimore Sun, September 16, 1972, quoting John J. Hushen, Department of Justice "public information director".

3. New York Times, Oct. 6, 1972.

THE COURT: Still going on?

MR. SILBERT: Yes.

THE COURT: The Grand Jury still held together. May not be sitting.

MR. SILBERT:....As I said, it has been continuing throughout and any lead that we get or continue to get we are following up. Even as of today. Tr. 239.

In early March, 1973, one-third of the three man prosecution team, Mr. Campbell, was reassigned within the office of the United States Attorney. He then began work on and completed the trial of three non-Watergate related felony cases.

No emphasis will be placed on the prosecution's criticized failure to cause immediate searches. It is true that Hunt first was interviewed by the F. B. I. on the day of the arrests. And it is true that the obstruction of justice was underway--documents were being destroyed and equipment disposed of--during the immediate post-arrest period. And, even though the destruction of documents often has been cited by the prosecutors as a cause for their initial investigative failures--usually without mention that it was, after all, within their authority to seek warrants to effect immediate searches--these aspects of their work need not be emphasized.[1]

---

1. An example of attitude was expressed as late as September 22, 1972, in a Washington Post article:

> In his television appearance Kleindienst said, "No, I did not know" that documents had been destroyed by Nixon campaign officials after June 17, as reported by the Post on Wednesday. He then was asked by the interviewer: "Well then, how thorough was the investigation?" The Attorney General replied:
>
> "I don't know whether they (the records) had been destroyed or not . . .And then the destruction of documents by a campaign committee, or a corporation doesn't necessarily mean that the law has been violated."

Instead an analysis of their later acts and omissions offers more rational guidance. For there was ample time for them to investigate their low-level case and learn facts during the months following the immediate post-arrest period. They then had an opportunity to reason and calculate, to write and to inquire. They had six months to work between the initial arrests and the trial.

As previously indicated, serious questions exist regarding various aspects of the prosecution, including the failure to track the contents of E. Howard Hunt's office; the failure to follow investigative leads that might have led to higher-ups; the failure to indict any of the defendants for "disclosure of illegally wiretapped conversations; the use of testimony which was, or should have been, known to be unreliable to account for vast amounts of CRP money; the effort to picture Liddy as the ultimate leader of the Watergate plot; the attempt to use the contents of the illegally intercepted conversations to prove blackmail as a motive; and the totally unsupportable attempts to portray defendants McCord and Liddy as off on an enterprise of their own.

In the search for answers, a first stop is the office of E. Howard Hunt.

The cracking of Hunt's safe and the tracking of its contents.

E. Howard Hunt's desk and safe were located in Room 338 of the Old Executive Office Building. On June 19, 1972, John W. Dean, III, caused that office to be entered and searched. The safe was drilled open and its contents and other items were stored in Dean's office. They supposedly remained in his custody for a week.

During that week it now appears that forged cables designed to illustrate complicity by President John F. Kennedy in the assassination of President Diem and other documents were found in and removed from that custody. Thereafter some of them were destroyed by burning by the Acting Director of the Federal Bureau of Investigation.

More than four months had elapsed when Mr. Hunt moved that his office property be returned to him and the evidence derived from his office search suppressed. His motion[1] was filed on October 11, 1972. The prosecutors responded on October 24, 1972.[2]

Newspapers do not reveal external events which may have prompted Hunt's motion. It was filed one month before election day and it seemed designed to telegraph to the Government and those involved in Mr. Nixon's campaign, a warning.

Hunt, of course, knew of his other illegal and non-Watergate activities. He knew of his role in the office burgulary

---

1. Motion of E. Howard Hunt for Return of Proterty and to Suppress Evidence. United States v. George Gordon Liddy, et al. Cr. No. 1827-72 (D.D.C.) filed Oct. 11, 1972("Motion").

2. Each member of the present prosecution team - and Mr. Titus - personally signed the Government's responsive pleadings.

of Daniel Ellsberg's psychiatrist and the rifling of that safe. He knew whether or not that activity had been successful. He knew of his forgeries and he certainly knew the nature and import of the documentation he had left behind him. And most importantly Mr. Hunt knew that at least some of Mr. Nixon's political and legal operatives knew exactly what he had left behind him, exactly what he was talking about. Mr. Hunt may not have known whether or not the prosecutors had full knowledge of all of the potentially very embarassing political facts contained in his safe but he could certainly assume and probably knew that [illegible] and that the prosecutors had full knowledge of them.

The documents filed by Hunt seem almost telegraphic in what they did not disclose. He did not itemize the items he desired produced. Instead he sought a hearing to determine

> precisely what property was illegally seized from Hunt's private office.[1]

And to make certain the full import of his message was understood his attorney volunteered the following:

> The only conceivable objection to this request is whether Hunt should be required to designate more specifically the documents he seeks.[2]

which he then answered negatively.

The prosecutions' response took little issue with this and seemed in part designed to remind Mr. Hunt of the rules relating to classified documents.[3]

In the background, it must be recalled, there were others who were actively participating in an expansive obstruction of justice, an expansive suppression of evidence.

1. Memorandum of Points and Authorities in Support of Motion for Return of Property and to Suppress Evidence, United States v Liddy, supra, at 5.

2. Motion at 2-3.

3. See [illegible] Memorandum of Points and Authorities in Support of Motion for Return of Property and to Suppress Evidence, United States v Liddy, supra, at [illegible].

Money was being collected and paid according to defendant James W. McCord to Mr. Hunt and then, through Mrs. Hunt, to the Watergate defendants. Perhaps Mr. Hunt's motion was merely a reminder to higher-ups of what he knew and, perhaps, he was seeking more money from them. The defense money demands were great and continuing. For example, James W. McCord has testified:

> A.....
> At the time around the election I told him I was being pressed for legal fee money and I would at that point because election was either complete or nearing completion go ahead and accept the money for that reason and did so and received, as I recall, $13,000.
>
> Q. When was that, sir?
>
> A. It was around November 7. I can't be exact of the date.
>
> Q. Who gave you that money?
>
> A. Mrs. Hunt. Deposition of James W. McCord 289, Democratic National Committee et al v. James W. McCord et al. C.A. 1233-72 (D.D.C. May 1, 1973) (Mr. McCord's Senate testimony is not immediately available.)

Thus, Hunt's motion should be reviewed not only in the context of the publicly seen political campaign -- the publicly known development of the case -- but also the clandestine and concurrent cover-up of the facts.

The prosecutors thereafter agreed to "conditionally" allow Hunt to inspect only the documents "which the Government intends to offer into evidence at trial" and his "personal property"[1] - elsewhere claiming that"[a]ll White House papers have always been considered to be the personal property of the President".[2]

Throughout their artfully drafted opposition the prosecutors represented facts which were not facts. They carefully avoided filing affidavits and, no doubt, relied upon representa-

---

1. Response to Motion of Defendants for Discovery and Inspection at 1, United States v Liddy, supra, filed Oct. 24, 1972, a pleading consolidated with a Motion for Reciprocal Discovery and Inspection and a Request for Pretrial Conference[s].

2. Opposition at 10.

hig

And even then they seem to have doubted

all or some of those representations

willing to represent to the

> [a]ll the material seized from
> Old Executive Office Building was subsequently
> turned over to the Federal Bureau of Investiga-
> tion. Id. at 4-5.

but they refused to cause that representation to be

to explaining that refusal in

> 2. Unlike the defendant Hunt, the
> has not filed affidavits in support
> proffered facts, because
> absolutely no effect on
> proceeding or the outcome
> which always
> [citations omitted]

In his two page affidavit Hunt had disputed the basic contentions of the prosecution - the date of termination of his employment. The Administration had taken the public and politically, if not legally, necessary position that Hunt was merely a casual or part-time consultant and that his employment had been terminated long before the Watergate break-in. An essential link of Hunt with higher-ups was his employment by them.

In his affidavit Hunt swore that he had been employed:

> [f]rom approximately July 6, 1971 through June 30, 1972 ... as a consultant and worked on special matters from time to time as requested. [emphasis added].

The prosecutors stuck to their termination date, a date they might have questioned

They said:

> White House personnel records indicate that
> services as a consultant were last used on
> ...
> Hunt had performed no services since
> surely as June 19, 1971

Affidavit

Opposition

> Room 338 was no longer "a constitutionally protected area ...."[1]
> ....
> [T]he services of that employee were completed more than two months previously....[to June 19, 1972][2]

And they specified the nature of his employment saying:

> His job was to review certain classified documents, later to become known as the Pentagon Papers, to determine which of these documents were appropriate for declassification. The defendant also worked in the area of narcotics importation.[3]
> ....
> On Monday, June 19, 1972, John W. Dean, III, Legal Counsel to the President, having received information [the source of this information remains unspecified but it was not according to the prosecutors, the F.B.I.] that Hunt - an alleged White House employee was possibly linked to the Watergate break-in, attempted to determine whether Hunt was in fact employed at the White House. He discovered that Hunt had been employed as a consultant to work on national security matters relating to the Pentagon Papers and international narcotics trafficking...and that he was no longer employed as a consultant.[4] [emphasis added]
> ....
> The man whose office was searched was known to have worked on national security matters....[5]

Hunt swore that he "maintained exclusive control" over Room 338 and "exclusive custody and control over a safe, desk and other appointments" where he "kept books, records, papers and other items of personal property".[6]

The prosecutors responded directly to his authority over the office and the documents there found by saying:[7]

> 1. Hunt was given an office, Room 338....
>
> 2. There were a number [unspecified] of envelopes and file folders stamped with classified designations which, upon opening, were found in fact to contain classified matter, most of it relating to the Pentagon Papers. There was also a black attache case ...[which contained] written matter, pamphlets and instruction booklets relating to electronic equipment.[8]

---

1. Id. at 5.
2. Id. at 9.
3. Id. at 1.
4. Id. at 2.
5. Id. at 9.
6. Affidavit at 1.
7. Opposition at 1.
8. Id. at 4.

3. [The] office in the Old Executive Office Building, which is in effect an annex to the White House, [was therefore in] the home and office of the President of the United States.[1]

4. The reasonableness of the search is eminently clear when one views it in context: The place that was searched was an office in the White House annex; all papers and files maintained by White House employees are by tradition and regulation the property of the President of the United States.[2]

5. [T]he White House is sui generis. It is simply different from any other office building or business enterprise in the world, and one's expectation of privacy must necessarily be of a lower order than in any other place including probably the most sensitive sections of the Pentagon. This is particularly so for someone like Hunt, a former CIA agent, working for the President on national security matters in the White House or the Old Executive Office Building, especially as regards papers and files generated in his very sensitive work....[3]

6. All White House papers have always been considered to be the personal property of the President, and he is the only person with privacy rights in papers generated in the White House. [footnote omitted][4]

....

> "Under our consititutional system, it is logical that the separate and independent status of the office should extend to and embrace the papers of the incumbent of the office." [citation omitted][5]

7. The President's papers include the records, files and papers of the White House office (his assistants and staff members) .... [A]ny and every paper relating to every facet of government whatsoever, or any public or political activity, is within the scope of employment and properly considered a Presidential paper "Nor can any prudent person deny that such records [of the Presidential office] must of necessity be protected against premature or politically motivated disclosure". [emphasis added] citing L.C. Jones, The Records of a Nation 161 (1969)[6]

Hunt swore "upon information and belief, agents of the United States Government, in June, 1972, entered the aforesaid private office [and] caused it to be searched...."[7]

---

1. Id. at 5.
2. Id. at 9.
3. Id. at 10.
4. Id. at 10.
5. Id. at 11.
6. Id.
7. Affidavit at 1.

The prosecutors replied:

> 1. John W. Dean, III, Legal Counsel to the President, ...discovered that Hunt had been employed.... Mr. Dean was anxious to know whether Hunt had complied with established procedures to turn over all White House papers and files upon termination.... [emphasis added].[1]
>
> 2. Accordingly, Mr. Dean instructed Bruce Kehrli, staff secretary to the President, to go to Hunt's former office...and to retrieve whatever documents were there.[2]
>
> 3. Mr. Kehrli noticed a safe in the office but it was locked with a combination lock; and the combination was not on file. [foot-note omitted] In order to obtain the papers which he was instructed to retrieve, Mr. Kehrli arranged with the General Services Administration to have its employees move the safe to a storage area and open it. For security reasons the safe was opened in the presence of an [unnamed] Secret Service Agent. Before removing items from the safe, Mr. Kehrli called Mr. Dean's office, and in Mr. Dean's absence, Mr. Fred Fielding, Assistant to the Legal Counsel to the President (Mr. Dean's principal assistant), responded to the storage area and assisted Mr. Kehrli in removing articles from the safe and placing them in cartons. Because of the lateness of the hour, these boxes were moved to Mr. Kehrli's office in the West Wing of the White House where they would be secure overnight.[3]
>
> On Tuesday, June 20, 1972, Mr. Kehrli instructed that the cartons be removed from his office and taken to the office of John Dean. Mr. Dean sorted through the boxes in order to determine whether there was any classified material contained therein. There were a number [unspecified] of envelopes and file folders stamped with [unspecified] classified designations which, upon opening, were found in fact to contain classified matter, most [but an unspecified not all] of it relating to the Pentagon Papers.
>
> ....
>
> Mr. Dean placed items such as office supplies in a cardboard box which he left on the floor in his office, but he placed the classified material and the attache case in file cabinets where they would be safer. All of the material seized from Room 338 of the Old Executive Office Building was subsequently turned over to the Federal Bureau of Investigation. [citation omitted][4] [emphasis added]

---

1. Opposition at 2-3.
2. Id.
3. Oposition at 3-4.
4. Id. at 4-5.

The prosecutors then took the following positions:

> 1. [T]he man who authorized the search [Dean] was not a law enforcement official but Legal Counsel to the President of the United States; the purpose of the search was not to investigate a crime but to ascertain the whereabouts of highly sensitive documents which had relevance to our national security.[1]
>
> 2. [I]t is relevant to consider who conducted the search and why. The entry and seizure were ordered by John Dean, Legal Counsel to the President, who was acting not as a law enforcement official but as the agent of the President, Hunt's employer. His purpose in directing the seizure was not the furtherance of a criminal investigation, but the determination of the whereabouts of sensitive classified documents related to national security. Indeed, Mr. Dean had not then received inquiry from the Federal Bureau of Investigation about defendant Hunt. Bruce Kehrli, the man who actually conducted the entry and seizure, is in a like position. Dean and Kehrli, though governmental officials, were acting more like private employers when they searched defendant Hunt's office....[2] [emphasis added]

Hunt swore that he never gave "consent or authorization to anyone to search" nor did he "abandon any of the property that was in [his] private office nor was it my intention to do so."[3]

The prosecutors replied:

> 1. Two agents of the Federal Bureau of Investigation interviewed Hunt at his home on June 17, and one of the agents spoke with him again by telephone on June 19, 1972.[4] [They then discussed Hunt's flight and movements and use of an assumed name.] Again using an alias, Hunt left Los Angeles, returned to California a few days later, and then left again toward the end of the month.[5]
>
> 2. ...Hunt had abandoned the premises and the property that was seized.[6]
>
> 3. While their [the F.B.I. agents] inquiries were thus sufficient to have prompted Hunt to return to Room 338...and remove what he knew to

---

1. Opposition at 9.
2. Id. at 13-14.
3. Affidavit at 2.
4. Opposition at 2.
5. Id.
6. Id. at 6.

> be incriminating evidence, he did not choose this course of action. Rather, he waited two days and then left town, moving at a fast clip under an assumed name. He went first to New York (or at least led others to believe that was where he was), then to Los Angeles. These circumstances and actions clearly reflect an intent to abandon all property which he had left in Washington, D. C. in Room 338 of the Old Executive Office Building.[1]

The prosecutors continued to present the Nixon Administration's story to the Court and to the public. At or shortly before the time of his guilty plea Hunt withdrew his Motion. And, at trial Kehrli, Fielding and the F.B.I. agent to whom a portion of Hunt's documents and property eventually had been surrendered solemnly presented their stories to the Watergate Judge and jury. See Tr. 1847-59; 1903-09; 1859-63.

But the man who ordered the search and retained lone and undisturbed custody and control of the fruits of that search during the entire week thereafter was not called to testify. John W. Dean, III knew the complete story of the Watergate affair, actively worked in the post-arrest cover-up and was -- as he had to be -- the prime authority on the search of Room 338. The prosecution had already contended that Dean was "Legal Counsel to the President, who was acting not as a law enforcement official but as the agent of the President, Hunt's employer."[2]

Then surely as a private citizen or government official he could be called as a witness. His assistant was called. Another White House official was called. And unless the testimony of Dean involved an invasion of the attorney-client privilege -- a privilege not involved unless Hunt's papers were in fact the President's very personal papers -- he was the most knowledgeable person to testify and a link in the chain of evidence. All logic dictated that he should have been called.

Since Dean did not enter an appearance at the trial or sign pleadings it could not be said that he was a member of

---

1. Id.

2. Id. at 13.

the prosecutors' team or an attorney "involved in the case". Association with Mr. Silbert should not have shielded him from testifying nor should his then powerful position have influenced the prosecutors' decision as to whether or not he was an appropriate witness. For as the Code of Professional Responsibility of the American Bar Association puts it

> The obligation of a lawyer to exercise professional judgment solely on behalf of his client requires that he disregard the desires of others that might impair his free judgment. The desires of a third person will seldom adversely affect a lawyer unless that person is in a position to exert strong economic, political or social pressures upon the lawyer. These influences are often subtle, and a lawyer must be alert to their existance. EC 5-20 at 288A.

and

> The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict. This special duty exists because: ... during trial the prosecutor is not only an advocate but he also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all....Further, a prosecutor should not intentionally avoid pursuit of evidence merely because he believes it will damage the prosecutor's case or aid the accused. EC 7-13 at 293A.

The public prosecutor

> must recall that he occupies a dual role, being obligated on the one hand, to furnish that adversary element essential to the informed decision of any controversy, but being possessed, on the other, of important governmental powers that are pledged to the accomplishment of one objective only, that of impartial justice. Where the prosecutor is recreant to the trust implicit in his office, he undermines confidence, not only in his profession, but in government and the very ideal of justice itself. [1]

But Dean--the man then actively working to conceal the truth--did not testify. Kehrli did testify and said that Hunt's office was, after

> around the end of March--...just considered... a vacant office. Tr. 1848.

an office to which Hunt still had access

> Because he had retained his White House pass. [2] Id.

---

1. Professional Responsibility: Report of the Joint Conference, 44 A.B.A.J. 1159, 1215 (1958).

2. A fact which surely must have raised a question in the minds of prosecutors about whether, in fact, his employment had ever been terminated, and which surely must have raised the prosecutors' eyebrows since he'd left a gun in his safe in "the home and office of the President of the United States." Opposition at 5.

And thereafter Mr. Silbert questioned and Mr. Kehrli answered as follows:

> In other words, everything that was removed from his office was transferred to Mr. Dean's office?
>
> ....
>
> THE WITNESS: Yes, it was. Tr. 1865.

Of course one problem with this testimony was that Mr. Kehrli didn't witness the "transporting to Mr. Dean's office" or know who did witness it.[1] Tr. 1858-59.

Thereafter, the F.B.I. agent to whom on June 27, 1972, some then remaining contents of Mr. Hunt's desk and safe had been turned over, testified that he had received them and had inventoried what he had received, Tr. 1859-63; a defense objection on the ground that "there had been no chain of evidence at this point," was entered, and overruled and the evidence was admitted, Tr. 1862. By not calling Mr. Dean, Mr. Silbert had kept off the stand the person who knew all about Hunt's documents and property and spent seven days keeping some of them, destroying others.

If the prosecutors trusted Dean implicitly they did so at their and the nation's peril. For by acceptance of his assistance and his word they were merely purchasing the story of the Administration and, after all, they worked for the

---

1. Mr. Fielding, Dean's assistant, testified that on June 19, 1972,

> The contents of the boxes -- the boxes themselves were to be stored in his [Kehrli's] office. His office was electronically secured in the evening. Tr. 1905.
>
> ....
>
> It [the attache case containing electronic equipment] was kept in the secure [Dean's] closet that I put it in in the evening-- the Tuesday, June 20th. Tr. 1907.

Under inquiry Fielding testified the attache case did not contain all of the contents of the safe.

> There were other documents in the safe which were also handled in a similar manner and turned over to the Bureau on the 27th. Tr. 1907-1908.

Administration. If they did not believe him, then as lawyers they had an obligation not to present that story in open court. If they didn't believe him, but intended to obtain convictions and thereafter use those convicted to implicate higher-ups, they were still as lawyers precluded from using this improper means to a proper end. If they did believe him and considered their means proper (there could have been no objection to placing him on the stand), they did so at their peril and in the face of substantial questions of fact. Indeed, an intentional avoidance of facts would have been difficult. And to exemplify just how difficult this was, on the day following the filing of Hunt's motion, in a page one article headed "FBI Hindered at First", the Washington Post of October 12, 1972 on its continuation page A 13 at Col. 3 said:

> Rather than permitting the FBI to come in and collect the materials Hunt had left in his White House office - the usual procedure - White House aides packed them up in boxes themselves, the FBI sources said. According to one FBI official, "If this had been any other government agency or a private organization" rather than the White House, "someone would have called up the director or the president and said, 'look, we need this information. Tell your people to cooperate'".
>
> "But we didn't exactly have the same access to the boss in this instance," he added with a laugh.

The prosecutors also may not have had "the same access to the boss" - or they may have considered access to Dean 'access to the boss' - or they may have had other "access" within or without the Department of Justice chain of command. In any event, as they put it,

> the White House is sui generis. It is simply different from any other office building or business enterprise in the world....

Whether the sui generis nature of the White House influenced them or not; whether the influence and power of Mr. Dean influenced them or not; whether they were deliberately misled by men of power and reputation or not; whether they were lied to by respectable people or not; whether they were all too willing to believe such people or not; or whether they knew or thought they knew what that safe had contained and failed or

feared to make further inquiry, because of national security representations made to them or not;--they did not present the witness who knew "all about the case" to the trial jury.

And while they were negotiating guilty pleas and attempting to present evidence of a fictitious blackmail--"off-on-an-enterprise-of-their-own"--motive to a United States Court, Dean was promising executive clemency and taking all necessary steps to make certain that the legal system remained corrupted. See e.g. the testimony of John Caulfield, New York Times, p. 1, Cols. 1-8 May 23, 1973.

On April 19, 1973, almost two months after the trial had ended, Washington D.C. lawyer Peter H. Wolf filed in Judge Sirica's court a Motion for a Protective Order[1] and said therein:

> Late in the summer of 1972 I received a telephone call from a client I had represented in court in certain matters. He inquired whether he was in danger of violating any law if he had hidden in his possession approximately eight cardboard cartons containing, among other things, the contents of E. Howard Hunt's desk in the White House before the F.B.I. got there, including plans to "bug" the Watergate. During that same telephone conversation, in response to my urging that he turn over these documents to people conducting investigations of the Watergate matter, my client indicated a possible willingness to do so and authorized me to ascertain the possibility of obtaining compensation to offset any potential harm to him. I did undertake such investigatory steps and it was necessary, of course, to relate to several people the communication of facts my client had made to me.
>
> Very shortly after this first telephone conversation, I telephoned Principal Assistant U.S. Attorney Earl J. Silbert and told him these facts and received an opinion from him that he did not think my client was committing any crime. We both specifically discussed in this context possible violation of 22 D.C. Code §703 (1967). In light of the law and facts known to me, it is my judgment my client has done nothing unlawful in any way. The fact remains, however, that some of the information related above could be used as links in a chain which might tend to incriminate him.
>
> As time progressed, additional facts became known to me through my client and were made known to other people for the purposes aforesaid. These included the facts that my client worked for the Committee for Re-election of the President, that he had been asked to pick up the cartons at the Executive Office

---

1. In re: Watergate Investigation Misc. No. 64-73 (D.D.C.)

> Building on the Sunday after the Watergate break-in, that a pass would be waiting for him at the guard entrance, that no questions would be asked when the cartons were removed from the building, and none were.
>
> My attempts to have my client disclose the documents he said were in his possession before the November, 1972 elections were to no avail. Shortly after the election my client informed me that the materials were no longer in his possession, had been turned back over to the Committee for Re-election of the President shortly before the election, and that some of the materials in my client's possession had apparently included the contributions' lists turned over by the Committee in the litigation instituted by Common Cause.
>
> I have been urging my client to cooperate voluntarily with any Grand Jury or Congressional investigations, but without results. [emphasis added].

Mr. Silbert denied these statements by Mr. Wolf.

Perhaps the prosecutors' failure to seek these "eight cartons containing, among other things, the contents of E. Howard Hunt's desk in the White House" contains the underlying reason why no Department of Justice personnel should be allowed to participate in this prosecution. For it may be that the Watergate prosecutors accurately described their problem as the basic problem of the Department and its lawyers when they termed this an "atypical case"[1] and, regarding Dean's entry into Hunt's office and safe, cited the doctrine of "exigent circumstances."[2]

---

1. Opposition at 18.

2. Id. at 19.

Going after the higher-ups: logical lines of investigative technique

The June 17, 1972 arrest of the five Watergate burglars with their 100 dollar bills, sophisticated equipment, and after a search of their hotel rooms, wigs and disguises and telephone-address books containing White House names and telephone numbers brought immediate speculation as to what higher-ups, if any, were involved.

Two logical lines of inquiry arose from the arrests Each led upwards. They were the tracing of the money to its source and the tracking of the contents of illegally intercepted telephone conversations to their goal. During the summer months there were published reports of document destruction at the offices of the Committee to Reelect the President ("CRP"). And there was early newspaper speculation regarding attempts to trace the money.

Immediately following the arrests the President's men began their attempts to conceal the source of Watergate funding. These efforts were complicated by the disclosure of Messrs. Hunt and Liddy as defendants. Liddy, as General Counsel of the Finance Committee to Reelect the President ("FCRP"), and Hunt as a White House consultant brought ultimate responsibility nearer the President.

It was at this time that the White House began its efforts to cover-up the funding sources which included the attempted use of the Deputy Director of the CIA to mislead the Director of the FBI (by telling him of a CIA interest in non-investigation into Mexican banking matters) to thereby side-track the Bureau's investigation into the route of money flow to and through Mexico to Miami

According to recent reports these efforts were unsuccessful due to the refusal of CIA officials to allow agency cooperation. According to these reports the FBI continued its work. Thus the record of the investigation and trial must be read with this allegedly unsuccessful aspect of the cover-up in mind.

Additionally these unsuccessful efforts were apparently unnecessary. For six months later the prosecutors were to offer no evidence of the checks' Mexican-American travels at trial.

Thus, although the tracking of these funds was considered important enough to those covering the money trail to duplicate and thereby risk damage to the nation's two most highly respected investigative agencies, that trail was considered unimportant by the prosecutors that they failed to include it in the indictment and to follow it at trial.

Also, it should be remembered that despite the President's refusal to interfere in the F.B.I. investigation, the President, according to John Ehrlichman:

> still personally believed and feared that the F.B.I. investigation might harm the agency.[1]

Whether Mr. Nixon took other action on that personal belief and fear or not is not known. What is publicly known follows.

---

1. Washington Post, 1, cols. 6-8, May 31, 1973. The text of Ehrlichman's statement is found, id., at D 1 cols. 1-8. See also New York Times, 1, col. 8, May 31, 1973.

The Mexican Checks.

On December 4, 1972, Judge Sirica asked the prosecutors,

> Is there going to be any effort on the part of the government to trace this money allegedly found?
>
> MR. SILBERT: Yes, there will be, if the Court please.
>
> THE COURT: ....Are you going to offer any evidence on the question of how the $25,000 check got into the possession of Mr. Barker?
>
> MR. SILBERT: Yes, Your Honor.
>
> THE COURT: You are going to trace that?
>
> MR. SILBERT: Yes.
>
> THE COURT: That is all in these exhibits, correct?
>
> MR. SILBERT: Not the $25,000 check as part of the 100 that have been pre-marked. We still have about 50 to 100 further exhibits to mark and that will be part of those exhibits, if Your Honor please.
>
> THE COURT: Are you going to try and trace, I think there is an item of $89,000.
>
> MR. SILBERT: Not necessarily from the source but we will trace it part of the way through the system.
>
> THE COURT: Why don't you trace it from the source? Isn't that part of the case?
>
> MR. SILBERT: If the court please, first of all part of it, the $89,000 check would involve testimony of a person out of the country over whom we don't have subpoena power. So far as we are concerned, so far as materiality and relevancy we can rely on the bank records of defendant Barker to show checks were deposited in his account and we will produce other evidence to establish the line in its relevancy and materiality. [emphasis added] Pretrial Hearing Transcript 8-9, Dec.4, 1972.

Throughout the proceedings Judge Sirica maintained an interest in the money flow.[1] For example, he interrogated the defendant Barker - at the time of entry of his guilty plea -

---

1. A continuing interest recognized by the prosecution. As Mr. Silbert put it during trial:

> If the Court please, some time earlier in this case you made an observation with which the Government wholeheartedly agrees that hundred dollar bills were floating around during the course of events like coupons. Tr. 1396.

regarding his receipt in the mail of $25,000:

> Didn't you think it was strange that amount of money coming through the mail without being registered or anything?
>
> MR. BARKER: No, I don't think it is strange, Your Honor. Like I said, I have previously before this been involved in other operations which took the strangeness out of that as far as I was concerned. Tr. 415.

During the trial there was constant attention to the flow of money after it left the FCRP and began its flow to the defendants. But the indictment had been so framed that elaborate charts and numerous witnesses were offered to track the money in order to demonstrate not the ultimate paying authority for the adventure but in order to prove the guilt and motive of the defendants.[1]

---

1. See e.g. Transcript at 1501:
MR. GLANZER:....And then the other chart is a chart dealing with the path of the money or particular money that was the $100 bills that were found on the defendants....
....
On the chart on the flow of the money or rather particular $100 bills of a certain serial number, it is serial numbers that begin with F02457510A. Tr. 1502.
See also the testimony and numerous stipulations offered to show downward, outward and lateral currency flow. See e.g. Tr. 1504. Re: defendant McCord's bank deposits, Tr. 1528-38. Concerning travel and living expenses, income tax returns, and bank deposits of the defendants all employed to prove a financial motive for the operation. See e.g. Tr. 1518-19, 1537, 1641-42, 1651-52, 1655-58, 1660, 1672.

But at the public trial the Mexican border remained uncrossed. Repeatedly an unsuccessful and frustrated Judge Sirica sought to carry witnesses down the money trail. When Hugh W. Sloan, Jr., testified he interrogated him out of the presence of the jury. Later the Judge felt it necessary to read this out-of-court testimony to the trial jury. The colloquy he thereby emphasized follows:

> Question: I am interested in the checks or Mexican checks. Let's go back there a few minutes. One for $15,000, one for $18,000, one for $24,000, one for $32,000. We call them the Mexican checks, Government Exhibit 112-A, total of $89,000, correct?
>
> Answer: Yes, sir.
>
> Question: You turned these over to Mr. Liddy, is that your testimony?
>
> Answer: Yes, sir. Tr. 1702.
>
> ....
>
> Question: What made you believe he could convert these checks to cash?
>
> Answer: ...I asked him what the best way to handle this would be and we naturally agreed to conversion to cash. ...[He] indicated he had some friends who would do it.
>
> Question: Tell me about the $25,000 check, the Dahlberg check? Tr. 1703.
>
> Answer: This was presented to me by Secretary Stans in his office sometime during the week following April 7. He indicated to me at that time it represented a contribution pre-April 7 from a donor whose name he gave me and the conversion to cashier's check was just a method of transporting it from Florida to our offices. Tr 1703-1704.
>
> ....
>
> Question: Who authorized you to turn the $199,000 over to Mr. Liddy in cash?
>
> Answer: Jeb Magruder.
>
> Question: For what purpose.
>
> Answer: I have no idea. Tr. 1704.
>
> ....
>
> Answer: ... I verified with Mr. Stans and Mr. Mitchell he was authorized to make those.
>
> Question: You verified it with who?
>
> Answer: Secretary Stans, the Finance Chairman, and I didn't directly but he verified it with John Mitchell, the campaign chairman.
>
> Question: This $199,000 could be turned over to Mr. Liddy is what you are saying?

Answer: Not the specific amount but Mr. Magruder, his authorization was authorization enough to turn over the sums in question. Tr. 1705.

Then the following transpired:

> MR. SILBERT: ... Your Honor made a remark of course the Government did not cross-examine Mr. Sloan. Naturally he was our witness.
>
> THE COURT: All right, the record will show you asked more questions and counsel for the defendants --
>
> ....
>
> MR. SILBERT: I just want the record perfectly clear ... [and] one point in this that troubled me and that is why -- is somewhat misleading as it is in the transcript because after you examined the witness if the Court please, neither the Government nor the defense counsel examined the witness and when I proposed to do it over the objection of Mr. Maroulis it was not brought out and this is the point that disturbs us. May I represent to the Court, at this time, of course there was nothing in Mr. Sloan's testimony that was in any way a surprise to us or that we did not know at the time it came out.
>
> ....
>
> [OF MR. SLOAN] I might say in his behalf our investigation, as intensive and thorough as it was, indicated absolutely no connection direct or indirect, no possible remote connection with the Watergate. However, if the Court please, he would say that it was because of the Watergate investigation that would be and in fact was to a large extent centering on the Committee for Re-election of the President, that both the grand jury and the F.B.I., if the Court please, would be investigating at the Committee, and among other things would get into the money so far as it related to the Watergate. Tr. 1717-19.

The Court then advised Mr. Silbert that it would allow Mr. Sloan to be brought back, placed on the witness stand and subjected to cross-examination "if the defense wishes to ask any questions...."

The defense responded:

> MR. ALCH: [for Mr. McCord] No, Your Honor. I only request a limiting instruction. Tr. 1719.
>
> MR. MAROULIS: [for Mr. Liddy] ...The defense is exercising its constitutional rights, and in exercising its judgment saw fit at the conclusion of the prosecutor's direct examination not to ask any questions. That should conclude the matter. Tr. 1720.
>
> ....
>
> Your Honor, I exercise my judgment in this matter and elected not to cross-examine. Tr. 1721.
>
> THE COURT: Let me tell you one thing: I exercise my judgment as a Federal Judge and Chief Judge of this Court and I done [sic.] it on many occasions and in the presence of the jury

examined witnesses where I thought all the facts were not brought out by counsel on either side. As long as I am a Federal Judge I will continue to do it. As I said the Court of Appeals might reverse me in this case, I am not concerned with that. I am concerned with doing what I think is the right thing at the moment and that is the reason I am going to read this testimony to the jury. I could care less what happens to this case on appeal, if there is an appeal. I am not interested in that. I am interested in doing what I think is right.

Now your client [Mr. Liddy] is smiling. He is probably not impressed with what I am saying. I don't care what he thinks either. Is that clear to you? You made your record. Tr. 1722.

....

I protected the rights of your clients -- and the rights of the Government, or the people of this country. You understand that? Tr. 1722.

....

I think there is a responsibility on a judge too to see that all the facts are developed that are pertinent to the issues in a case, because they have not been developed insofar as Mr. Sloan is concerned .... Tr. 1723.

Mr. Glanzer then responded to Judge Sirica telling him the Grand Jury testimony of Sloan and his F.B.I. statements had been turned over to defense counsel:

> and after reviewing that material defense counsel made their considered judgement not to cross-examine. Tr. 1724.

He suggested that Judge Sirica review the Grand Jury minutes to see that:

> a very thorough and vigorous examination and cross-examination of Mr. Sloan on every conceivable aspect of this case was gone into in the grand jury [room].... Tr. 1724.

Later, in response to an objection by Mr. Liddy's attorney the following transpired:

> THE COURT: ...You can cross-examine him, Mr. Maroulis.
>
> You never cross-examined Mr. Sloan one iota. You had an opportunity to question the veracity of Mr. Sloan whether or not this man ever told him that, Mr. Liddy. But you never lifted your finger to do it, Mr. Maroulis.
>
> ....
>
> MR. MAROULIS: That is the judgment I exercised. Tr. 1732.
>
> ....
>
> MR. SILBERT: Just so the record is clear, Your Honor, Mr. Sloan is available and should

> Mr. Maroulis, in the exercise of his judgment, decide that he does want to cross-examine, we, at no time, would have any objection. Tr. 1733.

Judge Sirica then read Sloan's out-of-court testimony to the jury. Tr. 1725-54. Thereafter, Mr. Liddy's attorney again objected and Judge Sirica stated to him:

> THE COURT: Mr. Maroulis, taking that statement the jury has heard in proper context, I believe it is more favorable to your client than detrimental to him.
> ....
> It was not done for the purpose of hurting your client. It was done solely for the purpose because I did not think all of the facts had been developed with reference to that part of the evidence.
> I am not criticizing you for not cross-examining the witness or anything like that. That is your privilege. Tr. 1756.

Despite Mr. Sloan's testimony regarding approval of payments by Messrs. Stans and Mitchell neither of them were called to testify.[1]

Maurice Stans, the Chairman of FCRP, was particularly important to this line of money inquiry. As is elsewhere noted herein he was not required to submit to examination before the Grand Jury. Instead, he was allowed a "special inquiry"[2] status and merely provided the Grand Jury a written sworn statement.

When sought as a witness to testify against the defendant Barker, who then was charged with violating Florida law by falsely notarizing Kenneth Dahlberg's signature to a $25,000 campaign check, Stans declined to testify in Miami. The United States Attorney's office unsuccessfully sought to enforce

---

1. The failure to call Stans and others as witnesses is explained away by the prosecutors who say they were not necessary to prove the offenses charged in the indictment. What they fail to add is that they personally framed the indictment and thereby fixed the limits of the testimony needed to prove the offenses they charged.

2. The spokesman said that Stans, the chief fund-raiser for the Nixon campaign committee, gave a sworn statement that then was presented as evidence to the Grand Jury. "Grand Jury Hears Both Mitchell, Stans" Washington Post, Sept. 22, 1972.

Florida's subpoena under the Uniform Witness Act.[1]

This effort was described in the October 21, 1972 Washington Star-News as follows:

> **Stans Extradition Denied for Trial**
>
> ....
>
> Unlike the case of Sloan in Fairfax Circuit Court, where Democratic Commonwealth Attorney Robert Horan pressed vigorously for extradition under the reciprocal agreement between the states, assistant U.S. Attorney Stuart Gerson said very little in court about the matter.
>
> He told reporters beforehand he was a surrogate for Florida in the proceeding but when the hearing began he stated only that the U.S. Attorney was a conduit for Florida and rests on that. [He said: "In that the United States has no position in this matter...." Hearing Transcript 14, Oct. 20, 1972.]

The prosecutors appealed and lost and Maurice Stans was once again spared the duty of providing public testimony about the Mexican checks or, for that matter, anything else.

The prosecutors' decision not to trace publicly the Mexican checks to their ultimate source was made with apparently full knowledge of the extent of the investigation.[2]

> THE COURT: ... Let's say the F.B.I. was investigating this case. When did they start the investigation, about?
>
> MR. SILBERT: Immediately after the arrest of the five persons, Your Honor, in the early morning hours.
>
> THE COURT: All over the country?
>
> MR. SILBERT: That is correct.
>
> THE COURT: Probably all over the world.
>
> MR. SILBERT: They went into at least four countries around the world. Tr. 241.

Knowing of the "around the world" nature of the inquiry and

---

1. In re: the matter of Maurice Stans, S.P. 168-72, Superior Court of the District of Columbia (Oct. 25, 1972) (McArdle, J.) (Stans was said not to be a necessary witness the Superior Court saying: "'THE AMERICAN COLLEGE DICTIONARY' defines 'necessary' as 'that cannot be dispensed with'. The same dictionary defines 'necessity' as 'indispensable'".) Affd. United States ex rel. State of Florida v. Maurice Stans (material witness) No. 68-75 S.P. 168-72 (D.C.C.A. Oct. 27, 1972).

2. And early knowledge of the Mexican checks: See Washington Post A-16, col. 6, June 3, 1973:

> Watergate prosecutor Silbert recalls receiving teletype notification of the Mexican checks from the F.B.I. on Thursday, June 22.

See generally "Mexican Connection Conflicts", id., at 1, cols. 6-8. The F.B.I. had interviewed Mexico City lawyer Ogarrio on July 10, 1972.

the whereabouts of Hunt during his post-arrest flight from Washington the following sentences from the prosecutors' Opposition filed on October 24, 1972, may have relevance:

> [H]e [Hunt] waited two days [until June 19, 1972] and then left town, moving at a fast clip under an assumed name. He went first to New York (or at least led others to believe that was where he was), then to Los Angeles, then somewhere else and returned to Los Angeles.[emphasis added] Id. at 6.

At trial Mr. Silbert presented evidence of Hunt's post-June 19, 1972, movements which included a stay at the home of his Los Angeles attorney, Morton Barrows Jackson, which commenced on June 20, 1972. Mr. Liddy arrived on the following day. Tr. 1608-1609.

On June 22, 1972, Mr. Jackson took a trip with his wife and step daughter to San Antonio, Texas, and from there to Mexico City. Tr. 1610-11. Mr. Hunt remained in his home during the Jackson absence. When they returned on or about June 29, 1972, Hunt had departed. Tr. 1611.

Mr. Silbert also offered evidence of airline ticket records for George Leonard [Liddy] and Edward J. Hamilton [Hunt] to and from Los Angeles and their area hotel registration cards during January, February and May, 1972, Tr. 1612-19, and

> an application for travel visa to Mexico signed by a person identifying himself as Edward Joseph Hamilton, Mexican Certificate Board visa number 5274033 dated January 7, 1972. Tr. 1618
>
> ....
>
> [P]urpose of the trip -- pleasure; means of transportation -- private air; signed Edward Joseph Hamilton; planning to visit Mexico City and Acapulco. Tr. 1619.

Thus immediately following the Watergate arrests Hunt may have gone to Mexico City; his lawyer did go to Mexico City; the F.B.I. went to Mexico City and "into at least four countries around the world"; and Judge Sirica attempted to trace funds through Mexico City but the prosecutors had limited their indictment and refused to allow their case to cross the Rio Grande.

This very basic prosecution decision may have been made in what best can be described as an atmosphere of "extreme concern" over the role of the Central Intelligence Agency in the Watergate case and related matters. Examples of this concern follow.

The typed transcript of the tape recorded Los Angeles Times interview with Alfred C. Baldwin, III, contained several references to the CIA. That transcript is under seal but in the trial transcript Mr. Glanzer represented that:

> ...except for one so far unimportant details the transcription is substantially correct. Tr. 1024.

Previously [illegible] the following representation:

> Incidentally, Your Honor, there are a few typos where it says CIA. It should be CRP. ...I sat down with Mr. Baldwin last night after court, and we went over this. Tr. 745.

Discussing these transcriptions the following representation was made:

> MR. SILBERT: We did as Mr. Glanzer indicated, review the content of the transcript of the tapes as Your Honor provided them to us yesterday, and I can say this to Your Honor, and I am sure defense counsel are now in a position to say it, that there is nothing in those tapes...the Government was not aware of months ago, in fact, long before the return of the indictment.
>
> Now all matters in there, all leads, have been fully investigated by the Government as part of its attempt to make as thorough an investigation as possible in this case. And I might say this that there is very, very little information on there outside of the last 20 pages where the attorneys are talking that is really not included in the Jencks material that has been made available to counsel for the defendant...." [emphasis added] Tr. 748.

The problem with the blanket representations of typographical error is that they were false. References to the "C.I.A." were not merely mis-typed renditions of the letters "C.R.P." And false though those representations were, they were reiterated and remain uncorrected.

The transcript of the *in camera* proceedings and "the last 20 pages [of the Los Angeles Times transcript where the attorneys are talking" should be read and the tape recording

listened to. They may provide the most accurate reflection of the prosecutor's 1972 state of mind.

From that reflection a question arises as to where the prosecutors acquired the "factual" basis for their C.I.A. concern.[1] Neither the C.I.A. nor the F.B.I. had that concern. But the prosecutors did have that concern-- or, at least they have said they had that concern.[2]

Or, perhaps, the Mexican checks have a different significance. The Administration's deep concern over public testimony about the Mexican money has never been adequately explained.[3]

---

1. See e.g. "Transcripts of Excerpts From the C.I.A. Memorandum About the Watergate Case", New York Times 24, June 4, 1973; "Ehrlichman, CIA Clash", Washington Star-News A-1, cols. 1-5 May 31, 1973.

2. They seemed to continue an extreme sensitivity in this area and to any references to the C.I.A.. For example, Prosecutor Silbert categorized as irresponsible to attorney Hope Eastman an attempt to require that the Government - which had repeatedly alleged that the Watergate wire-tap was a non-Governmental purely private activity - be put to the burden of proving its allegation.

3. That concern ran so deep that "they":
1. Were willing to implicate the C.I.A. and the F.B.I. in a cover-up; and,
2. Undergo public criticism for non-disclosure at trial and,
3. Have Maurice Stans fight extradition to Miami to testify in a misdemeanor case; and
4. Have Dean urge Sloan - who had already testified before the Grand Jury - immediately prior to the election to publicly invoke the fifth amendment at Barker's Miami trial; and
5. Delay until now the presentation of the matter to a Houston, Texas Grand Jury (which, of course, remains under the control of another Justice Department employee).

Perhaps the prosecutor's refusal to allow the evidence to take them south of the border resulted from a real or imagined concern over national security. Perhaps not. But, in any event, even though the C.I.A. - F.B.I. cover-up was aborted, President Nixon "who still personally believed and feared that the F.B.I [Mexican] investigation might harm the agency" got his way after all.

The prosecutor's second set of money problems. How much was there and what it had purchased.

> [W]hen a party to the case...the Government counsel ...call[s] a witness to the stand as their witness--the Government in effect vouches for the credibility of that witness--they in effect represent to the jury and to me and to the counsel for the defendants that they vouch for the credibility of that witness. In other words the Government would like to have you believe...everything he has to say in this case, both on direct examination and cross-examination. That is what we call vouching for the credibility or the truthfulness of a witness.
> United States District Judge John J. Sirica to the Watergate jury. Tr. 528.

Mr. Silbert had an explanation for the quarter-million dollars paid Mr. Liddy by the Finance Committee to Reelect the President ("FCRP"). His accounting was to be based upon the testimony of Jeb Stuart Magruder, bolstered by that of campaign scheduling director, Herbert L. Porter. In his opening statement Mr. Silbert told the jury:

> ...The President was not planning on doing much campaigning in the primaries. In his place there was going to be used what they call surrogate candidates, they were going to be standing for the President at the open primaries being held at such states as New Hampshire, Florida, and Wisconsin. Tr.22.
> ....
> They were concerned about demonstrations by extremist groups on the left or the right. Mr. Porter wanted to get some information with respect to anticipated demonstrations, demonstrations they might expect against some of their surrogate candidates, these standins for the President. Tr.23.
> ....
> [They] turned to Mr. Liddy and gave him an assignment. He was to try and develop an intelligence operation by which he could find out in advance whether there were planned demonstrations in these cities such as Manchester, New Hampshire, and Miami, Florida, the scheduled appearances of candidates.
> And for that particular intelligence operation Mr. Magruder allotted Mr. Liddy $100,000. The idea at the time was that he might have to investigate, develop intelligence at tentative locations using--ten different locations using ten different people for ten months, January through the election at $1000 a month, and that is how you get the $100,000. Tr. 23-24

Mr. Silbert went on with his theory of the case:

> So Mr. Liddy was given a second assignment directly by Mr. Magruder. He was to look into the convention security problem out at San Diego and try and develop information as to the size to the alleged participants, what their plans were, if in fact they were going to demonstrate as was feared.[1] Tr. 24.
>
> ....
>
> For this particular assignment Mr. Liddy was allocated the sum of $150,000, so the total amount of money alloted for the different assignments was $250,000. Tr. 24.

He accounted for the money -- "virtually all of it was in $100 bills" -- as follows:

> Now the evidence we will produce before you will show that Mr. Liddy from the time he received the assignment until June 17th received about $235,000.
>
> What did Mr Porter and Mr. Magruder receive in exchange or in return for that expenditure of funds?
>
> Mr. Porter received some information about an anticipated demonstration in Manchester, New Hampshire from the left-wing group. He received a second piece of information about an anticipated demonstration in Miami, Florida, from a right-wing extremist group.
>
> Mr. Magruder received some information from Mr. Liddy that instead of the 100,000 demonstrators they might expect at San Diego they could expect about 250,000 . And this caused a good deal of concern and was relied on partially by the Republicans as to why the convention site about the first week of May was transferred from San Diego, California to Miami, Florida. That is the information they received.[2] Tr. 25-26.

---

1. Another part of his "assignment" was to "check into" the receipt by a Democratic candidate "who had taken a firm stand against pollution" of a contribution from a person who "was a big polluters" (sic). "That was an assignment given to Mr. Liddy". Tr. 24. Query: Did this relate to Hunt's planned burglary of a Las Vegas safe?

2. The high-cost of information should have revealed to Mr. Silbert he was "believing" either spendthrift fools or liars. See also the testimony of Hugh W. Sloan, Jr. re: subornation of perjury by Magruder and LaRue. Additionally the I.T.T. -- Republican Convention--scandal then seemed a more logical reason for moving the convention site. And his story could have been checked with the Internal Security Division of the Department of Justice or others therein. The Department was then controlled by those who now control it--(excepting Messrs. Kleindienst, Mardian, Mitchell and Richardson). Mr. Silbert might have ascertained that CRP was receiving reports from the Government and hardly needed Liddy to tell them about planned demonstrations. Mr.Silbert knew this. At the trial Robert Houston, McCord's assistant testified that he was "to receive and record information from outside police sources" which included "the Federal Bureau, the Internal Security Division" of the Justice Department. Tr.1951.

But, he told the jury the Government had no records of the expenditures:

> ...we will be able to account to you for approximately $50,000 of that money. We cannot account for the rest. Tr. 25.

And he attempted to rationalize Mr. Magruder for the jury, the Judge and the public.

> As I mentioned at the time of the conspiracy, the time of arrest, defendant Liddy was working for the Finance Committee not the Committee for the Re-election of the President. Why? What had happened? The fact of the matter, ladies and gentlemen, as you will hear from testimony of Mr. Magruder, that Mr. Magruder and Mr Liddy did not get along. Mr. Magruder was younger and in charge and Mr. Liddy did not like taking orders from him. Mr. Magruder never knew who Mr. Liddy was, didn't like the kind of reports he made either. They had a blow-up, and at the end of March or early April Mr. Liddy left and went downstairs.... Tr. 48.

From the beginning and throughout the trial, Mr. Silbert attempted to picture Mr. Liddy as the person in ultimate charge of the operation. Thus, as far as Judge Sirica, the jury and the public were to know, the chain of responsibility stopped short of Mr. Magruder and Mr. Mitchell and certainly below Mr. Dean who was then, after all, the President's counsel "investigating" the Watergate Case.

Some examples of Mr. Silbert's theme -- from his words at the start of the trial and its end -- follow:

> Defendant Liddy has a lot of questions to ask and McCord was very respectful to him -- he was the boss. Tr. 52.
>
> ... he is another conspirator, the leader of the conspirators, as I will discuss with you later on, finding out the information from the person for whose work he is paying, the money man, the boss. Tr. 2036.
>
> And whose money was it, and who ordered the payment? The defendant Liddy, the money man, the boss. Tr. 2060.
>
> ....

And who was the boss? Who was the boss that night? .... The boss, the defendant Liddy, the man in charge, the money man, the supervisor, the organizer, the administrator. That was Mr Liddy, organizing and directing this enterprise right from the start. Tr. 2038-39.

When Baldwin got his money from McCord he had to account for it, didn't he? He gave a receipt every time but when McCord got his money from Liddy, the Boss knows what he was paid, doesn't he. You don't have to explain things to the boss because the boss is right there. When the boss isn't there then you got to account for it and that boss is Liddy. Tr. 2049.

Mr. Magruder's testimony echoed the prosecutor's opening statement. He told of his early campaign role:

> in the first stage ... responsible for the planning and organization of the total campaign ... the total authorization of all funds ... the planning and substantive activity ... like advertising, direct mail, our precinct organization, get-out-the-vote organizations, our surrogate program--that was our speakers' program, stand-ins for the President; our research and polling programs, the administration of the campaign. Tr. 1403.

He said he had asked:

> ... John Dean, if he could find a lawyer to handle these [legal] problems for us on a full-time basis, ... and John recommended Mr. Liddy ... and he began on this following Monday [in mid-December, 1971].
>
> ...
>
> [W]e talked about his F.B.I. background and we did discuss the potential opportunities if we had an investigative problem and intelligence-gathering problem....
>
> Tr. 1406-1407.

And, he said:

> in January I asked Mr. Liddy if he would take on the assignment of being able to build up an intelligence-gathering operation in San Diego so that we could be aware of the problems that would occur at the time of the convention. Tr. 1410.

Magruder said he had knowledge of a Democratic candidate -- "known for his anti-pollution stand" -- who was supported "by a major polluter". He had asked Liddy to investigate that matter. Tr. 1411-12.

He said he had received "[p]rimarily verbal reports" from Mr. Liddy, Tr. 1412, who had "left the Committee" because Liddy "basically had a different philosophy of management."

> and, we didn't get along personally... our personalities seemed to clash. Tr. 1413.

Additionally Mr. Seibert's witness told the jury that Mr. Liddy had reported that there would be 5,000 demonstrators at the San Diego Republican Convention rather than a previously [illegible] 100,000, Tr. 1417-18,

> [illegible]
> to Mr. Mitchell [illegible]
> and I [illegible]
> the [illegible] San Diego [illegible]

> We had other problems with the hotels and the area but [illegible] ordinary concern and we were able to move the site of the convention from San Diego to Miami. [emphasis added] Tr. 1416.

Mr. Magruder was not subjected to cross-examination. Tr. 1412

Herbert L. Porter, C.R.P.'s director of scheduling for the surrogate speakers' campaign, Tr. 1425, testified that he had been concerned about demonstrations against the surrogates and had discussed the selection of "about ten college-age people" to serve as undercover agents

> ...paying them $500 a month for ten months and another $500 expenses which would be about $1,000 a month and for ten months would be around a hundred thousand dollars so that figure was discussed, yes. Tr. 1428.

The prosecutors presented his testimony that for this money he had

> received basically three pieces of information....regarding left-wing extremist groups in New Hampshire and a second time he gave me information regarding right-wing groups in Miami, Florida, and, on another occasion he indicated about some heavy potential problem in San Diego. Tr. 1431.[1]

There was no cross-examination. Tr. 1432.

---

1. Mr. Porter has now testified before the Senate Select Committee that his trial testimony was perjured. A copy of the Senate Hearing Transcript is not presently available.

The knowledge of Mr. Sloan, a witness for the prosecution,

Hugh W. Sloan, Jr., a witness Mr. Silbert presented to the Watergate trial jury had been Treasurer of the FCRP. He had been staff assistant to the President working from 1969 to 1971 under Messrs. Dwight L. Chapin and H. R. Haldeman. Deposition of Hugh W. Sloan, Jr., Democratic National Committee et al v McCord et al, Civ. Ac. No. 1233-72, 5-9 (May 7, 1973).

Prior to the trial Mr. Sloan knew that:

1. At the request of Herbert W. Kalmbach, the President Nixon's personal lawyer, he had placed $350,000 in $100 bills in a briefcase for Gordon Strachan to deliver from the White House. Deposition at 10-11.

2. He had received the Vesco money from Maurice Stans. Id. 44-45.

3. He was concerned over the authority of Magruder to disburse the large sums he was providing. Liddy he went to Stans about Magruder's authority and Stans said he would check with Mitchell. When he expressed his concern over what the money was being used for Stans said "I don't want to know and you don't want to know." Id. 45-46. The payments were approved by Stans and, according to Stans, Mitchell. Id. 48-50. [This Mr. Silbert certainly knew for, at the trial, Sloan testified that he had verified Mr. Magruder's authority to pay $199,000 in cash to Mr. Liddy. As Sloan put it, "I verified with Mr. Stans and Mr. Mitchell he was authorized to make these... Secretary Stans, the Finance Chairman, and ... didn't directly but he verified it with John Mitchell, the Campaign Chairman." Tr. 1452.]

4. He'd disbursed up to $950,000 in cash in a similar manner. Id. 103-104.

5. Before Liddy joined the FCRP he [Sloan] had received "legal support" from John ... III who Mr. Silbert knew was in charge of the White House Watergate "investigation".

6. He had talked with Hardin on June ..., 1972, that Hardin "had been assigned ... Mitchell to investigate the facts ... the Watergate incident" and Hardin told him "appeared overwhelmed by the information" he gave him. He seemed genuinely shocked and, as a matter of fact, said something to the effect "that goddamn Magruder just lied, he told John Mitchell he only authorized ..." [emphasis added] Id. 113-4.

7. On June 23 or 24, 1972, he met with Fred LaRue who said:

> You know, there's a problem here. We have got to agree on a figure of what was given to Liddy.
> .... it can't be that high; we can't use a figure that high. And, as I [Sloan] recall, my response was, "Fred, I really don't see what difference it makes. If it is a problem it doesn't matter whether it is $200 or $200,000." And he said something about political sensitivity or something, and he just dropped it at that point. Id. 119.

8. During the same period he had spoken with Magruder, id. 123, who had been "more specific" than LaRue:

> He said we have to agree on a figure of what was given to Mr. Liddy. I believe at that point I definitely know what the figure was. He, as I recall, suggested a figure of 70 or $80,000. I responded that I would not perjure myself. As I recall it, he said, "You may have to". And I left his office at that point. Id. 123-24.

9. He'd met Magruder on July 5, 1972, at the Black Horse Tavern, id. 124, and:

> He indicated that he thought he and I ought to go down and see the United States attorney, Mr. Titus, and convey to him the information about the funds provided to Mr. Liddy in the sense that he had authorized them and that I had paid them at his instruction but he brought up the subject again of the fact that we would have to agree to a figure and he at this time suggested I believe, a figure of $40,000. Id. 125. Sloan responded "I will have to think about that. I will talk to you again tomorrow. Id. 125-26.

10. He'd seen Magruder on the following morning (July 6, 1972) and Magruder:

> ... asked whether I had thought about what we had covered the preceding evening. I believe my words were to the effect that if I were asked whether I had given Mr. Liddy $40,000 I would say yes, but I would not agree to not saying it was more if I was asked about it or the precise amount if that question were asked, at which point he dropped it.

LaRue had come in and taken Sloan aside:

> ...and asked me whether we had agreed on a figure. And I essentially just related to him what I had told Mr. Magruder. Id. 127-28.

11. On July 13, 1972 he'd again met with LaRue who had suggested Sloan plead the fifth amendment.

> I told him that I would not perjure myself or take the Fifth Amendment, that if I were asked the questions I was going to

tell the truth. Id. 136.[1]

....

[T]his was something I did not want to be a party to. Id. 134-37.

12. He had then called Maury Stans and said I was thinking about this. He said "I don't want to talk about this on the phone." He said, "I'm due back tomorrow. I have a meeting with the Bureau in the morning. "Come in and we will talk about it." I said, "Fine." So I stayed home the next day and I came in the early afternoon, 1:00 or 2:00 o'clock, and I was told by Secretary Stans that he had informed the Bureau that I had resigned. Id. 137.

---

1. And he says he told his story to Messrs. O'Brien and Parkinson, lawyers for the Committee; Deposition 138-39; John W. Dean, III and Maurice Stans, id. 143; Dwight Chapin, id. 144; John Ehrlichman who said "his position was that he [Ehrlichman] would have to take Executive Privilege until after the election in any case," id. 146; and Herbert W. Kalmbach, id. 153. Mr. Chapin's "reaction essentially was (1) you are overwrought and (2) the important thing is to protect the President and (3) you ought to take a vacation". Id. 151. He received "no helpful guidance" from John N. Mitchell whose "only remark to me was, when the going gets tough, the tough get going." Id. 141.

The knowledge of the prosecution.

Most importantly the following appears from Mr. Sloan's deposition.[1]

Q. Now, you did go to the Grand Jury, did you not?

A. Yes, I did.

Q. And before you went to the Grand Jury you went to the prosecutors' office, did you?

A. Yes, I did.

Q. Did you give them the same information that you testified to today relative to the cash which had been disbursed to Mr. Liddy?

A. Yes, I did.

Q. Did you give them the same information relative to the conversations which you had with Mr. LaRue and Mr. Magruder?

A. Yes, I did.

MR. STONER: This is with the prosecutors?

MR. DUNIE: With prosecutors.

BY MR. DUNIE:

Q. Who were the prosecutors you discussed this with?

A. Mr. Silbert, Mr Campbell, and Mr. Glanzer.

Q Were all three present while you were being questioned?

A. Yes, sir.

Q. Was your attorney present?

A. Yes, he was.

Q. That was Mr. Stoner?

A. That is correct.

Q. And thereafter did you go before the Grand Jury?

A. Yes, I did.

Q. When you testified before the Grand Jury did you testify the same as you testified today?

A. I am not sure it covered all these points. The Magruder conversations took, I would say, about half my

1. Which was confirmed by Mr. Sloan in his testimony to the Senate Select Committee. Transcript not presently available.

Grand Jury testimony. It was a somewhat narrower focus. I don't think all the information I had given to the prosecutors was covered in the Grand Jury itself.

Q. Let me back up a little bit, Mr. Sloan. How many times have you gone before that Grand Jury?

MR. STONER [Attorney for Mr. Sloan]: I want to object at this time. I am not sure this is a proper area of questioning. I have allowed it to continue, Mr. Dunie [Attorney for the D.N.C.], but I don't think that at this stage it is a proper area for you to inquire into. ....

Tr. 138-40.

Thus Earl J. Silbert, the people's prosecutor had presented perjurers to the Watergate Judge, jury and, through them, to the citizens for whom he worked. He had built his public case on the foundation of their words. He had constructed his proof of motive from their words. He was to argue that the ultimate boss of the Watergate Seven had taken money from Mr. Magruder and they had gone off on "an enterprise of their own."

There can be no doubt that Mr. Silbert had reason to question whether or not Mr. Magruder's story had been woven from whole-cloth. Mr. Sloan had provided him reason to question and a ground for disbelief.

He had facilities for investigation of Mr. Magruder's professed reason for the change of the convention site; of C.R.P.'s need for more information about demonstrators than had been provided by the F.B.I. and the Internal Security Division; and of all information then known by Mr. Magruder's unInterviewed administrative assistant, Mr. Reisner.

After whatever investigation he'd made, if any, Mr. Silbert had presented Mr. Magruder and Mr. Sloan as witnesses. And, in so doing, he vouched for the credibility of both of them.

The trial: dominant features in a "clubby atmosphere".

The first Watergate investigation culminated in a "sham" trial -- specific attributes of which are more fully discussed elsewhere herein -- where the following became dominant events and characteristics:

1. A plea bargain -- guilt to three counts and no opposition to low bail pending sentencing -- was struck by the prosecution and defendant E. Howard Hunt. Judge Sirica refused to accept the plea bargain or reduce bail. He then entered a plea of guilt to all charges. On the representation made by his attorney, William O. Bittman, that Mr. Silbert intended to elicit his testimony before the Grand Jury, Hunt was subjected to but limited open court interrogation.

2. A plea bargain -- guilt to three of eight counts and no opposition to low bail pending sentencing -- was struck by the prosecution and the four Cuban-American defendants. Judge Sirica refused to accept the plea bargain or reduce bail. They then entered pleas of guilt to all charges. These defendants were required to submit to open court interrogation but knew nothing about higher-ups.

3. The prosecutors' "theory of the case" accepted the then questionable testimony of Jeb Stuart Magruder which served to rationalize the quarter-million dollars paid to Liddy and, thereby, to shift attention from the involvement of higher-ups.

4. The prosecution attempted to satisfy the demand of the public and Judge Sirica for knowledge of the motivation (higher-up participation or lack of it) of those on trial by proving that those arrested were motivated by money or the desire to blackmail a Democratic official. In this way they could have demonstrated the conversion of legitimately provided political funds to the personal use of the seven captured defendants. Thus they would have shown that there was an injury not merely to the immediate Democratic victims of the crime but also a substantial criminal injury to the Republicans whose funds were so converted.

conversations into evidence in clear violation of 18 U.S.C. §2515. These efforts continued even after the Court of Appeals found it necessary to enter two orders externally governing the conduct of the trial.

6. They attempted to present the defendant Liddy as the top-man and final authority in the entire enterprise.[1]

7. These efforts could have been successful since neither Mr. McCord nor Mr. Liddy were expected to testify at the trial and there was only occasional short-duration cross-examination of prosecution witnesses by defense counsel. No affirmative factual defense testimony was presented.

8. The prosecution refused to call any of the five guilty-pleading defendants to the stand as witnesses against the two remaining defendants even though their pleas of guilt had been accepted.

9. Most significantly the prosecution had failed to indict anyone for the crime of disclosure of the contents of the illegally intercepted conversations.

10. The prosecution failed to place either Messrs. Stans or Mitchell on the stand to testify as to their authorization of payments to Liddy or the source of the $89,000 Mexican money. Their indictment did not require this.

11. The prosecution failed to place Mr. Dean on the stand to testify as to his custody of the contents of defendant E. Howard Hunt's Executive Office Building office.

12. The primary seeker of facts became the District Judge who seemed forced into an actively inquiring role by the limited scope of the prosecution's case.[2]

---

1. As the Attorney General had put it:
"I believe the seven persons indicted by the grand jury gave the orders" for the break-in. Kleindienst said an "intensive" investigation by the Justice Department has turned up no evidence that anyone else is involved. Washington Star-News, Sept. 20, 1972.

2. The prosecution took great care to avoid injuring the [illegible], see e.g. Tr. 1599-1600:
MR. SILBERT:....So the record is complete, the Government has never had and will never have in the future objection to your asking any question you deem appropriate of any of the witnesses in this case, because you,

(continued on following page)

13. A reporter who covered the trial on a daily basis described its clubby atmosphere and provided Mr. Silbert's responses to inquiries, as follows:

> A clubby atmosphere has prevailed in federal court during the three weeks it has taken federal prosecutors to present their case in the Watergate bugging trial.
>
> The questioning of Republican officials and others has been more polite than penetrating. Entire areas have been left unprobed.
>
> In corridor discussions prosecutor Earl J. Silbert has been asked repeatedly by newsmen why he has not posed additional questions to witnesses or called higher Republican officials to the stand.
>
> Silbert's contention is that the government is submitting only evidence that is necessary to prove charges in its indictment of the original seven defendants last September.[1]
>
> There is no evidence of a wider conspiracy, he has told reporters. Additional testimony could be immaterial and irrevelant, he has said.
>
> Not only have the prosecutors' questions been limited but the defense attorneys at times have even waived their opportunity to cross-examine officials of President Nixon's campaign.
>
> ....
>
> Silbert agreed in an interview that allegations about Segretti, if true, could place the Watergate case in a larger perspective for the jury. Segretti, in fact, was a witness before the federal grand jury that indicted the Watergate participants.
>
> But the Segretti "aspect would have to be tied in with something illegal" and the government has no indication that Segretti broke any laws, Silbert said.[2]
>
> Therefore he is not being called as a witness, he said.
>
> ....
>
> Dean was assigned by Mr. Nixon several months ago to prepare a confidential report on the Watergate case. Silbert said he did not plan to call Dean as a witness and that Dean's report would not be subpoenaed.
>
> "That's clearly within the area of executive privilege", Silbert said.

(continuation of footnote on previous page)

> together with all of us, have the responsibility to see that the truth is brought out, and we fully support whatever you do along that line.
>
> We have a similar concern, though, as Your Honor expressed, we do not like to see the names of innocent persons hurt by surmise, by speculation, by conjecture in matters of a similar nature and that is what gives us the concern.
>
> Just as the guilty should be brought to the bar of justice, innocent persons should not be harmed. Tr. 1399-1400.

1. Of course, Mr. Silbert had framed the indictment himself and thereby fixed the limits of public inquiry. He then relied upon the indictment he had prepared to rationalize the restricted questioning of the comparatively low-level witnesses he presented at the trial.

2. (Footnote 2 is on the following page)

Silbert also said he had decided against calling as witnesses the five defendants who pleaded guilty.

While there would be ample precedent for putting them on the stand, he told the court, he would rather call them later before a federal grand jury for closed-door questioning.[1]

---

2. (Footnote from previous page)
This, in spite of the fact that Senator Henry M. Jackson had filed a complaint against the Segretti operation with the United States attorney's office in Orlando, Florida, in March, 1972. No action was taken until after the Watergate Trial. This information obtained from Senator Jackson's files.

1. Los Angeles Times 7, cols. 7-8 Jan. 28, 1973.

The rush to guilt: the defendants negotiate then fight to plead; secrecy; and the acceptance of purchased guilty pleas.

Perhaps no portion of the trial record more clearly discloses the reasons for rejection by the people of a [illegible] belief in the "honesty and integrity and decency of government" than does its beginning.

First, the people saw the defendant Hunt with an overwhelming - indeed, compelling - desire to plead guilty. They began to see this when Mr. Hunt's attorney rose and said:

> Your Honor, I have a matter as Your Honor knows, I would like to bring to your attention after the government's opening statement. Tr. 14-B. Jan. 10, 1973.
>
> ....
>
> MR. BITTMAN: ... At this time Your Honor Mr. Hunt wishes to withdraw his plea of not guilty and enter pleas of guilty to counts one, [illegible] and eight.
>
> I informed the Government of this fact approximately a week ago[1] and they indicated that the Court's acceptance of this plea would be a fair disposition of Mr. Hunt's case.
>
> It is at their request we are entering the plea after the opening statements rather than at an earlier date. Tr. 91.
>
> ....
>
> MR. SILBERT: ... that representation is accurate. .... First of all, that there was to be no agreement [as to sentence]. ... [We] would not accept any plea unless the Government had a chance to present Your Honor a

---

1. On January 5, 1973 (within Mr. Bittman's "approximately a week") a representation was made to the Court on a pretrial motion.

> MR. MORGAN: "...A man named Harry Fleming spoke on this telephone, that Harry Fleming was a Republican official in the Republican Party, in The Committee to Re-elect the President, and that he has been advised by other ranking Republicans that his job was altered after these wiretaps.
>
> Now, that would show a political use [of the wiretap] rather than blackmail as a use." Tr. 44 (Jan. 5, 1973).

Mr. Bittman even though apparently he had already negotiated Mr. Hunt's guilty plea protested that pretrial publicity thereby engendered might somehow infringe upon the rights of his soon-to-plead-guilty client, Mr. Hunt. As Bittman said:

> "Now he has named an individual by the name of Harry Fleming.
>
> THE COURT: Don't you think it might help your client?
>
> MR. BITTMAN: No, Your Honor, prejudicial publicity in my opinion will not help my client. [illegible]
>
> ....
>
> I do believe that if Mr. Morgan has any information ... the grand jury is the appropriate forum because it can be testified to in secrecy. In a

detailed statement of the evidence so that all would know the facts that had been uncovered by the investigation in this case.[1] Id. 92 ....[And] that we would seek to have him called before the Grand Jury to inquire as to what knowledge he has, if any as to the involvement of others in the so-called Watergate case. Tr. 93 [emphasis added]

....

MR. BITTMAN: Your Honor, I have discussed this very provision [Rule 46c Fed. R. Crim Proc regarding bail pending sentence] with the Government and they have indicated to me that they have no information which would indicate to them that Mr. Hunt, number one, possesses any danger of fleeing, or, number two, possesses any danger to any other person or to the community. Tr. 98 .... The Government itself, and I am being repetitive now, has stated to me, and I am sure they will state to Your Honor, that they have no information which would indicate that Mr. Hunt is likely to flee or would pose a danger to any person or the community. Tr. 101.

JUDGE SIRICA: Given the nature of this case the Court is compelled to the conclusion that both the substance and the appearance of justice require that the tendered plea be refused. Tr. 108. .... Anything further?

MR. BITTMAN: Yes, Your Honor. In view of Your Honor's ruling, Mr. Hunt respectfully asks leave of the Court to withdraw his plea of not guilty and plead guilty to counts one, two, three, four, five and eight.

THE COURT: Those are all the counts he is charged in?

MR. BITTMAN: Yes, sir.

....

THE COURT: Now, in your own words, [Mr. Hunt] I would like you to tell me from the beginning just how you got into this conspiracy, what you did, various things that you did so I can decide whether or not you are knowingly and intentionally entering this plea voluntarily with full knowledge of possible consequences.

....

MR. BITTMAN: Mr. Silbert indicated to me some time ago that ... it was Mr. Silbert's intention to bring all of these defendants before a Grand Jury subsequent to their sentencing so certainly Mr. Hunt will be required to appear before that Grand Jury. Tr. 116.

Mr. Silbert then committed Mr. Hunt to the prosecution's facts even prior to his appearance before the Grand Jury.

---

1. The public display of an opening statement based on the perjure testimony of Jeb Stuart ... perjured testimony presented after Hugh W. Sloan, Jr., had advised him of Magruder's subornation of perjury and without even an interview of Magruder's administrative assistant to inquire into Magruder's truthfulness.

He rose and asked Judge Sirica to:

> inquire of the defendant to ascertain and make sure there is a factual basis for the idea, whether he accepts the essential accuracy of the facts as outlined in the Government's opening statement. Tr. 120.

> THE COURT: I will put the question to you as framed by counsel: Do you accept those as substantially the facts as you know them to be?
>
> DEFENDANT HUNT: Substantially, yes, Your Honor.
>
> THE COURT: You agree with the Government's opening statement insofar as your knowledge of the conspiracy?
>
> DEFENDANT HUNT: Yes, Your Honor.
>
> THE COURT: And your participation in it?
>
> DEFENDANT HUNT: Yes, Your Honor.
>
> THE COURT: Does that answer the question?
>
> MR. SILBERT: Yes, Your Honor, it does. Id. 121.

Hunt's counsel then sought a reduction in Judge Sirica's requirement of a $100,000 surety bond as bail "[i]n view of the Government's position in this case...." Id. 124.

Judge Sirica denied the request.

Thus, the highest-up of those who pled guilty -- a White House "consultant" whose knowledge included forgeries to implicate a former American President in the assassination of Diem, burglary to procure the psychiatric records of criminal defendant Daniel Ellsberg, and, perhaps other even more bizarre activities -- was returned to the safety of a jail cell and the discretion of the prosecutors in the secrecy of the Grand Jury room.

Despite Judge Sirica's refusal to accept Hunt's negotiated guilty plea, his sending him to jail and the setting of his bail at $100,000 (to be met by a surety bond), the next four days saw four more defendants [illegible] in order to plead guilty and go to jail.

On January 15, 1973, Mr. Silbert announced to the Grand

---

1. (footnote 1 is on the following page)

that we would accept from the point of view of the Government again, a plea from each of the defendants to three counts.... Tr. 361

Judge Sirica rejected the deal.

Thereafter, Mr. Silbert said:

> I would be willing to represent to Your Honor because it is a fact that we have no other information since that time come to our attention which would indicate that either of these men, or any of these men are likely to flee or pose a danger to the community. Tr. 363.

Judge Sirica denied the motion to reduce bail.

Then Mr. Glanzer noted that:

> The Government was concerned about certain articles that appeared in the paper about certain inducements and inducements, so the Government asked the defendants with leave of counsel whether in any manner, shape or form, directly or indirectly or suggestively, they were coerced in any manner to enter this plea and they stated they were not and in the presence of their counsel. Tr. 365-66.

Judge Sirica advised these defendants that if he were:

> not convinced that you are doing this ... without coercion, threats or anything like that, I can't have to accept the plea and then you will retain trial.
>
> Do you understand that.
>
> THE DEFENDANTS: (In chorus) Yes, Your Honor. Tr. 366.

In his inquiry of the defendants Judge Sirica asked

> ... is anyone at this time or anytime paying anything to the four of you defendants?
>
> THE DEFENDANTS: (In chorus.) No one.
>
> THE COURT: Men say no one?
>
> MR. BARKER: No one.
>
> THE COURT: Has anyone assured you if you go to jail, either one of you or the four of you, if you go to jail your families will be taken care of?
>
> THE DEFENDANTS: (In chorus.) No one. Tr. 367.

---

1. (Continued from previous page)

[illegible] since Monday, January 7, 1973, [illegible]

THE COURT: Was there any statement made to you by Mr. Barker or anybody, Mr. Hunt or anybody else, that you would be taken care of if you got in trouble or anything like that?

THE DEFENDANTS: (In chorus.) No, sir.

THE COURT: You deny that?

THE DEFENDANTS: (In chorus.) Yes, sir. Tr. 467.

He attempted to ascertain from Mr. Barker the identity of the person who had mailed him $25,000.

MR. BARKER: For a definite fact I cannot state who sent that money. Tr. 468.

Barker testified he first saw Hunt

after a long time on April 17, 1971, Tr. 494.

and that he knew Hunt was a

consultant to the White House. Tr. 411.

And when asked by Judge Sirica:

Didn't you think it was strange that amount of money coming through the mail without being registered or anything?

he responded:

No, I don't think it is strange, Your Honor. Like I said, I have previously before this been involved in other operations which took the strangeness out of that as far as I was concerned. Tr. 415.

Repeatedly Judge Sirica-- who unlike the prosecutors had no ready access to the F.B.I. and other investigative agencies-- sought the truth.

THE COURT: Has any person outside of the courtroom today or in the courtroom promised that if you four men would plead guilty you wouldn't have anything to worry about, your families would be taken care of, would get so much a month, for example, has that been done?

THE DEFENDANTS: (In chorus.) No, Your Honor. Tr. 418.

Thereafter these four defendants were unduly cast to jail and to secrecy. For, even though the prosecutors recognized the government's right to call them as public trial witnesses, Tr. 437, against McCord and Liddy, Mr. Silbert decided to do otherwise.

And although Mr. Glanzer said:

> The Government would not have concurred or acquiesced in any procedure whereby anybody pled guilty in private or secret in this case. We feel that everything that goes on in this case should be conducted in open court subject to public scrutiny. That is what has happened in this case. .... Tr. 438.

The Grand Jury system and the prosecutors' tactics worked to make certain that there would not then be any "public scrutiny"; and in fact public scrutiny would not be what "happened in this case."

The investigation: materials for construction of an improper motive; the growing pressure on the prosecutor to present evidence of "the why" of Watergate:

The Watergate investigation - said to have been the most thorough since the assassination of President Kennedy - "discovered" the tap on the telephone of the Association of State Democratic Chairmen (the "Association") on September 13, 1972.

Thus, almost three months after the initial arrests - and two hours after Attorney General Kleindienst, had told reporters that the O'Brien tap had not worked - that the tap on the telephone of R. Spencer Oliver, Executive Director of the Association had worked.[1] A secretary noticed trouble on the line, the telephone company was called, and thereafter the F.B.I. came and removed the transmitting device from the Association's telephone.

Attorney General Richard Kleindienst's reaction was "somebody put something on that phone after the F.B.I. was there".[2]

A month later the Chicago Tribune, p. 1, Nov. 3, 1972, printed the following:

> A federal investigation into the Watergate bugging incident may not have been as thorough as President Nixon and Justice Department officials have claimed according to information obtained today by The Tribune.
> ....
> It was learned that the listening device found Sept. 13 was on a frequency of 118 megacycles. This is the same frequency used by Alfred C. Baldwin, III....
> ....
> Only a few persons, including Baldwin and the Federal Bureau of Investigation, were aware of the frequency or the listening devices planted in the Democratic offices. When the bug was discovered Sept. 13, it

---

1. Since the transmitting device remained on the Association's telephone until September 13, 1972, and actually transmitted telephone conversations until its removal, all of their conversations were available to anyone who remained in range and turned a receiver to the correct frequency.

2. Baltimore Sun, Sept. 22, 1972; also see for the Department of Justice reaction "Democratic Bug Set After June 17,", New York Times, Sept. 22, 1972.

reportedly was still active and could have been in use for the three months after the Watergate incident occurred.

....

Telephone company personnel were called in Sept. 13 when a secretary in the office became suspicious. All of the telephones were taken apart during the two-hour search and the bug was found.

At the time, Oliver said he believed the device could have been left over....

However this was specifically denied by Atty. Gen. Richard Kleindienst, who said "somebody put something on that phone after the FBI was there."

More than 50 employees in the Democratic office were interviewed by FBI agents during the course of the investigation and several were told the office had been bugged on July 5.

However, it was learned that six Democratic workers in the offices on that day said they could not recall any concerted effort by the FBI to debug the telephones.

During that time Mr. Silbert knew that Mr. Oliver's telephone had been tapped, that no listening device had been recovered from it and that Baldwin had overheard conversations on no other telephone.

Without contradiction he allowed the Attorney General and other Republican politicians to insist that Oliver had for some reason tapped his own telephone. At no time did Mr. Silbert dispute the allegations made by his superiors each of which reflected - as he knew, unjustly - on Mr. Oliver's integrity.[1]

There then followed a thorough F.B.I. probe of Mr. Oliver - the victim of the crime. A newspaper description of Mr. Oliver's reaction and the reasons for it follows:[2]

> A Democratic party official whose phone was bugged says he finds it "frightening" that an FBI investigation is seemingly more concerned with probing into his life than with getting evidence on the wiretappers.
>
> Spencer Oliver, whose phone at the Democratic National Committee headquarters was found to be tapped two weeks ago, said in an interview yesterday the FBI had refused to tell him anything it learned during an investigation.

---

1. On page [illegible] Mr. Silbert's [illegible] man who [illegible] indeed [illegible] story about a CIA [illegible] and [illegible] to [illegible] from [illegible] or Mr. [illegible] Campbell, [illegible] who [illegible] be in position to [illegible] Federal Bureau of Investigation, Mr. [illegible] do not [illegible] tion by [illegible] T. [illegible]

2. New York Post, Sept. 26, 1972

...

Oliver said four FBI agents have been spending the past week interviewing 80 staff members at party headquarters and asking such things as whether Oliver has marital problems and whether he works late at night in his office.

"It is kind of frightening", he said.

"I tell you", he told a friend who called him during the interview, "if you ever find your phone is tapped, throw it in the wastebasket and don't tell anybody."

....

But he said the direction of the FBI investigation even has him worried about "old traffic tickets I might have forgotten."

"I'm the victim of a crime, but now they're investigating me and not the committee (to Reelect the President)," he said.

"They're asking the staff here what kind of person I am, do I come in here late, if I have marital problems."

"They ask things like, how do I get along with Jean Westwood, who are my enemies, who are my rivals, who might be jealous, and how I managed to stay around so long.

Oliver said that as far as he knows the FBI didn't even check his office when they arrested five men with eavesdropping gear at the Watergate headquarters June 17.

....

Oliver said the tap was not found on his phone until three months later, when his secretary complained to telephone repairmen of crackling sounds. They found the bug and called the FBI.

Oliver says he believes the tap was placed on his phone by mistake or the intruders thought his dealings with state party leaders would give them advance knowledge about who would get the nomination, or they wanted party headquarters bugged in advance of the convention before tight security went into effect.

"But the questions being asked by the FBI now are intended to find out if someone here did it," he said. "And I notice Agnew is saying that the Democrats bug their own phones, which is a very irresponsible statement for the Vice President to make about a federal crime."

Oliver said he understands one of the men implicated in the break-in told a grand jury in July that a tap had been placed on his phone, but as far as he knows, the FBI did not check that out for two months until he called the telephone company.

"It seems to me that if they were doing such a thorough job they would have come in here and checked", he said.

Public pressure began to mount against the Administration and its prosecution shortly after the indictment had been returned.

The indictment had stopped at the lower levels of the conspiracy. And there was no adequate explanation of the reason for the break-in. The public desired to know the story of Watergate.

From the Justice Department's public information officer John Hushen who - on the day after the indictments were returned - responded to whether the seven men "were acting under the orders of others" they learned:

> We have absolutely no evidence to indicate that. Absolutely none.

and,

> Mr. Hushen made it clear, however that the grand jury investigation is over and there is virtually no prospect of further indictments.[1]

But nine days later they learned that Assistant Attorney General Henry E. Petersen:

> insisted the three month probe had not revelaed the true reasons for the incident or the identity of the persons who may have been behind it.
> ....
> Petersen frankly told his questioners that he expects "the jail doors will close" behind the seven men now charged before they ever reveal further details of the affair.
> ....
> They [his remarks] contrasted with the earlier public statements of other Nixon administration officials, who have said either that the indictment returned 10 days ago in Washington revealed the full Watergate story or that farther significant details would come out during the trial.[2]

On December 4, 1972, that desire for knowledge was articulated by Judge Sirica. At a pre-trial hearing the following transpired:

---

1. Baltimore Sun, Sept. 16, 1972.

2. "Watergate Burglar Motive Still Mystery Says U.S. Aide" Washington Post A 14, cols. 1-3, Sept. 24, 1972.

> THE C[illegible]: Now, on the question [illegible] motive and intent in this case, as you kn[illegible] there has been a lot of talk about who hired whom to go into this place. Is the government going to offer any evidence on the question of motive and intent for entering the Democratic National Committee's Headquarters?
>
> MR. SILBERT: There will be some evidence if the Court please.
>
> THE COURT: What do you mean by some evidence?
>
> MR. SILBERT: Well, there will be some evidence introduced. It is a question which the jury will make the proper inference, it is up to the jury to accept or reject the evidence that we propose to offer, but there will be evidence we will offer that will go from which a jury may draw, we think, an appropriate inference as to perhaps a variety of interests.
>
> THE COURT: I just want to know that because it may become important in settling or marking these exhibits.[1]

The newspapers promptly set forth Judge Sirica's concern:

"Watergate Trial Plans Are Outlined," Washington Star-News, December 4, 1972;

"Judge Asks Broader 'Bug' Trial", Washington Post 1, Dec. 5, 1972;

"Judge Wants Prosecution to Widen Watergate Case", id., A 14, cols. 1-3;

"Watergate Judge Hints at Wider Trial," New York Times, Dec. 5, 1972;

"Watergate Motives Sought," Washington Star-News, Dec. 6, 1972.

Thus Mr. Silbert knew that in order to satisfy Judge Sirica and through him the public, he had to supply proof of motive. At a pre-trial hearing on December 19, 1972, he told Judge Sirica:

> I might say this, if the Court please: Your Honor has raised the question again today as you did at the earlier pretrial conference. Is the question of motivation, the purpose of this alleged incident. It is a very reasonable, very normal question for Your Honor and for any juror to ask.....
>
> As I indicated to Your Honor back on Dec. 4, when you first raised the question there is, and no doubt the government will produce some evidence from which the jury may draw a variety of motives if they choose to do so based on the evidence that we will introduce.

---

1 Transcript of Hearing, 9 (Dec 4, 1972)

> I am sure Your Honor is also aware the government cannot read any person's mind There is no device yet known to man by which the government or anyone else can search into the motivation reasoning or the functioning that makes a person to act or commit or engage in any particular line of conduct. And if, Your Honor, the government is successful, if the government is successful in this prosecution in introducing evidence sufficient to prove beyond a reasonable doubt the guilt of the persons charged in the indictment, then I submit to Your Honor that there is no secret then as to the source, to the best source of the motivation of the persons and the possible involvement of others. Hearing Transcript. 88-89.

It was probably during this period that he charted a course.

He had at his disposal

1. the FBI investigation of R. Spencer Oliver and

2. information obtained from Oliver and

3. the word of Alfred C. Baldwin, III as to what had been said on the telephone.[1]

And so near mid-December, 1972, Mr. Silbert advised Mr. Oliver that he intended to introduce the contents of the illegally intercepted conversations at trial.

---

1. Since the logs of telephone conversations had been destroyed with the Gemstone File and no tape recordings of the conversations existed, Oliver was at the mercy of Silbert and Baldwin's memory. And Mr. Silbert retained a, no doubt, powerful influence over Mr. Baldwin's memory for Mr. Silbert would later determine whether he had told the "entire story and told it truthfully." As it was put at trial:

> MR. GLANZER: Your Honor...he was promised he would not be prosecuted for his involvement in the matter, provided he told the entire story and told it truthfully. Tr. 1080.
> ....
> [W]hat it is is a commitment. It's a commitment that is based upon consideration and that consideration is predicated upon complete disclosure and truth and, if not, if there is a breach of the commitment we would proceed against him.
> THE COURT: It amounts to the same thing.
> MR. GLANZER: ... It isn't where a man comes into Court and we gave him a bath. Tr. 1081.
> See also Tr. 1084.

Immediately after being told that Mr. Silbert intended to prove the contents of the illegally intercepted telephone conversations, Mr. Oliver conferred with Robert E. B. Allen and the then President and Vice-President of the Association, Severin Belliveau and Robert S. Vance, and Ida M. Wells, Mr. Oliver's secretary. Messrs. Allen, Belliveau and Vance are trial lawyers. They, of course, knew that the direct questioning of Baldwin as to the contents of the conversations he had overheard would open him to more specific defense cross-examination. And they knew that even though Mr. Silbert told Mr. Oliver he intended to ask him only about the general nature of the conversations, e.g. were they personal? Were they political?, the opening of an area would subject him to more specific cross-examination.

They desired to prevent Mr. Silbert from doing to them that which not even the wiretappers had done - illegally disclose their private personal and political conversations to the world. They were not only at the mercy of the President's prosecutor and the attorneys defending the President's criminal supporters - they were also at the mercy of the "memory" of Baldwin and he was subject to prosecution control. And if the public speech of the campaign was the music of politics, private gossip was its poetry.

Thus we entered the case to assure constitutionally and statutory protection for political and personal speech. And not only did the constitutional right seem clear, the statute seemed totally applicable. Indeed, 18 U.S.C. 2515 flatly prohibited the introduction of contents into evidence:

> no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial ... or before any court ... if the disclosure of that information would be in violation of this chapter.

The statutory definition of "contents" included:

> any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication. 18 U.S.C. § 2510 (8).

And in Gelbard v. United States 408 U.S. 41, 92 S.Ct. 2357 (1972) where the Supreme Court after noting that the prosecutor's

1. (footnote 1 is on the following page)

interrogation would be based upon the illegal interception of the witnesses' communications ...." 92 S. Ct. at 2359.

and

> the disclosure or use of information obtained through unauthorized interception are crimes ....Id.

and that the

> witnesses' potential testimony would be "disclosure" in violation of Title III. Id. at 2360.

pointed out that the "course of conduct" of the prosecutor

> "'if pursued unchecked could subject the prosecutor himself to heavy civil and criminal penalties.'" [citation omitted] Id. at 2363.

---

1 (footnote 1 from previous page)
Since the O'Brien tap hadn't worked the only persons actually overheard and thereby injured were Oliver; his secretary, Ida M. Wells; Severin M. Belliveau, the Maine Party Chairman, and the then President of the Association; Robert S. Vance, the Alabama Party Chairman, the then Vice-President and present President of the Association; and Robert E. B. Allen, the President of the Young Democratic Clubs of America and the DNC's director of Youth Division, the persons to whom they talked and others who may have used their telephone. Among those who specifically authorized the suppression of contents of their conversations were the Party Chairmen of the District of Columbia, Ohio, Nebraska, New Hampshire, New York, North Dakota, South Carolina, South Dakota, Virginia, West Virginia and Wyoming. Thereafter the Executive Committee of the Association and the Association itself authorized this action. The Association consists of the 110 state, district and territorial Chairmen and Vice-Chairmen of the Democratic Party.

Mr. Silbert was to take great care to acquire and present this evidence of motivation which would focus public attention on those on trial rather than higher-ups.

The motivation of the Cuban-American defendants had seemed clear from soon after their arrest. They desired to protect the United States from communism and to overthrow the government of Fidel Castro. To them, at least, there was subversion at the Democratic National Committee and the road to Havana began at the Watergate Complex.

Their motive was politics; their goal, The Revolution.

Indeed, on January 15, 1973, Judge Sirica addressed the four of them -- they were then struggling to plead guilty -- and said:

> ...I posed certain questions to the Government during the pretrial hearing of this case....
> ....
> This jury is going to want to know somewhere along the line what purpose did you four men go into the Democratic Headquarters for.
> ....
> They are going to wonder who, if anyone, hired you to go in there, if you were hired. I am just assuming they will be asking themselves these questions. They are going to want to know if there are other people, that is, higher up...
>
> who are mentioned or who have been involved in this case and should be in this case, you understand that?
> The question will arise undoubtedly what was the motive for doing what you people say you did by going into the Democratic Headquarters as outlined by Mr. Silbert in his opening statement. You remember his opening statement. They will want to know where this money came from, who was the money man, who did the paying off, who paid Mr Barker, how much was paid. They are going to want to know a lot of things before this case is over. Tr 391-92.

They still "want to know a lot of things". For they got few answers from the prosecution. And the answers they did get were neither accurate or, for that matter, even addressed to the overriding questions. For example, the playing down of political motivation[1] and the playing up of financial motivation which were then and are now particularly disturbing

---

1. (footnote 1 is on the following page.)

Thus the responses of the guilty pleading Cuban-Americans to Judge Sirica's questions seem revealing. See for example the response of defendant Martinez:

> Money doesn't mean a thing to us, Your Honor. I own a hospital in Cuba, one of the best hospitals. I own a factory of furniture in Cuba. I was the owner of a hotel in Cuba. I left everything in the hands of the Communists there. So money, really I lose everything and really money is not a great deal of my decisions. So I never worry for money. Tr. 396.
>
> ....
>
> No, when it comes to Cuba and when it comes to Communist conspiracies involving the United States, I will do anything to protect this country against any Communist conspiracy. Tr. 405.

and the response of defendant Gonzales:

> Because my idea, I figured that is the political scene representing Cuba and I am an American citizen and I keep feeling about my country and the way people suffer over there. That is the only reason I did my cooperation in that situation.
>
> Q What did Cuba have to do with breaking in and entering the Democratic Headquarters?
>
> A. I don't know, that is what he [Hunt and Barker] told me and I believed him. Tr 401.

and the response of defendant Barker:

> I think that Mr. Martinez has stated quite eloquently that these are not men that sell themselves for money. Tr. 412.

It should be noted that the only open-court questioning of the Cuban-Americans was by Judge Sirica. The prosecution called not one of these co-defendants after entry of their guilty pleas to testify against Messrs. McCord and Liddy. They explained that they intended to call these men at a later time to testify before the Grand Jury.

---

1. During his opening statement Mr. Silbert referred to "obviously it was a political motive, political campaign" covering that in a single short paragraph Tr 62. He covered financial motive in the following four pages. Tr. 62-67 His closing argument, Tr. 2020-67, passim, stressed financial motivation on the part of "all" the conspirators the thrust of the argument best summed-up in two of his phrases: "Money talks and the defendant Liddy had lots of money to make that money talk, didn't he?" Tr. 2042; "He [Hunt] and Liddy were off on an enterprise of their own. Diverting that money for their own uses." Tr. 2065.

At the trial Mr. Silbert did attempt to prove an anti-McGovern Cuban-American motive through other witnesses. From an adverse ruling by Judge Sirica, Tr. 1807-1808, Mr. Silbert returned from a recess and explained

> Just so the record is clear that these two witnesses had
>
> ....
>
> The only, what we consider admissible testimony that the Government had developed through its investigation as to the motive of those four, other than financial [which consisted in toto of their "poverty", their possession of $100 bills, and an expensive meal he proved they'd eaten]
>
> ....
>
> there would be no other...admissible evidence....
>
> Your Honor, we are not quarreling with Your Honor's decision, and just wanted it on the Record and also for Your Honor's information as well. Tr. 1811.

Thus neither the jury nor Judge ever learned from under-oath testimony of their obedience to Mr. Hunt's orders, of their other activities, and of their dedication to the re-election of Richard M. Nixon.

It didn't matter. For, according to Mr. Silbert's plan, they had been misled by their old comrade-at-arms, for Hunt had gone off on a profit making adventure of his own.

---

1. Leonard Glasser, a Miami architectural-engineer, to tell of an attempt by Barker to obtain the air conditioning plans of the Miami Convention Center; and Jack Stewart to tell of Barker's taking him near the Convention Center, and of Barker's

> tremendous opposition--to Senator Kennedy as a potential nominee for president of the United States, feeling that he would be for the United States as Castro was to Cu....
>
> Tr. ...

I did not then know Mr. Silbert. I had talked with him on the telephone twice regarding the testimony of Messrs. Baldwin and Oliver and Ms. Wells. And I had not been able to learn a rational reason for his intended course of conduct.

1. There is no way by which a motive in the mind of a wiretapper --lawful or unlawful--can be ascertained from the overheard conversation. Firstly, the conversations have not been heard until after the tap has been installed; then, whatever the contents of the conversation may be, they were unknown at the time the motive to tap was formulated. Even with lawful wiretaps the information obtained is most often not the information sought. For example, a lawful wiretap installed under court order in an investigation of narcotics trafficking may produce conversations ranging from a bet on a baseball game to the existance of a dental appointment -- and not a word about narcotics.

2. Proof of contents could in no rational way be considered necessary to prove an element of the crime. Indeed, it then seemed that the prosecution desired to compound to the aggrieved persons,

> the statutorily proscribed invasion by adding to the injury of the interception the insult of compelled disclosure. Gelbard v. United States, 408 U.S. 41, 92 S. Ct. 2357, 2365 (1972).

3. Additionally, the indictment had been drawn with presumably painstaking care and rendered the contents completely irrelevant. Counts Two through Eight inclusive employed no words which arguably placed contents at issue.

The First Count alleged conspiracy

> to obtain and use illegally information from the offices and headquarters of the Democratic National Committee and related political entities. The illegal and unlawful methods and means ... that were used or were attempted to be used ... were ...
>
> (a) To intercept wire communications of officers and employees ...
>
> (b) To intercept oral communications ... in the offices and headquarters ...

Not a scintilla of evidence was offered as to "use."

4. Even if the indictment had charged these defendants or others with the crime of "disclosure" [1] -- which it did not -- it seemed that the contents would not be relevant.

And the effect of the present law was as stated in United States v. Schipani, 289 F. Supp. 43, 60 (E.D.N.Y. 1968) where, after noting non-compliance with the provisions of Title III of the Omnibus Crime Control and Safe Streets Act of 1968" the district court said:

> Divulgence at a trial or to other government agents would, accordingly, be prohibited by the Act [citation omitted]

---

1. 18 U.S.C. § 2511 (c) 23 D.C. Code §542 (c)

Blackmail: The prosecutor's quest for a fictitious motive.

At our first meeting,[1] Earl J. Silbert was accompanied by Seymour Glanzer. I was accompanied by co-counsel, Hope Eastman.

The tone of that meeting was one of cordial and mutual concern. Mr. Silbert seemed unable to understand why the victims of the crime would hesitate to endorse every reasonable step which might lead to a successful prosecution.

We sought to convey to him the basic fear of the victims of the crime -- that up the ladder of authority from Mr. Silbert -- the prosecution and the defense were under a common influence or control. And that under those circumstances they saw themselves as pawns -- continuing victims of the crime who were now to be victimized by the trial itself.

To exemplify this I cited the deposition of Mr. Oliver which had been taken by the then attorney for the Cuban-American defendants -- men who had overheard no conversations. Mr. Oliver was represented at the deposition by Robert E. B. Allen. Mr. Rothblatt by indirection had been inquiring into contents -- the identity of persons who had talked on the tapped telephone. The following had transpired:

> Q. [By Mr. Rothblatt;]All right. Who is Mr. Robert Allen?
>
> A. [By Mr. Oliver:]This is Mr. Robert Allen (pointing to his counsel).
>
> MR. UNGAR: Let the record show that the witness has just indicated his counsel.
>
> MR. ROTHBLATT: I am embarassed. I did not associate the two names. Since you are the witness, I will have to ask the question of you.
>
> BY MR. ROTHBLATT:
>
> Q. Was Mr. Allen, Mr. Robert Allen, in charge of -- did he have some capacity, either official or unofficial, at the Democratic National Committee Headquarters?
>
> A. Yes. at 116.[2]

---

1. At the Kansas City Beef House, 625 Pennsylvania Ave. N.W., Washington D. C. Dec. 22, 1972.

2. Deposition of R. Spencer Oliver 116, Lawrence F. O'Brien et al. v. James W. McCord et al., C.A. No. 1233-72, Sept. 8, 1972.

Mr. Silbert said that he had not read the civil case depositions. He and Mr. Glanzer did not then agree that there had been a higher-level Government-defense interchange of prosecution facts or plans.

He intended, he said, to use the contents to prove the fact of the interception and, in that manner and otherwise, to employ contents to corroborate Baldwin's testimony.

I explained the law as we saw it. We talked generally about the case. During the discussion, Mr. Silbert abruptly said:

> Hunt was trying to blackmail Spencer and I'm going to prove it.

Since I had not previously conceived of this I did not then join issue with his remark.

Before we left the restaurant Mr. Glanzer undertook to

seek an agreement from defense counsel wherein they would waive their right to cross-examine into the specifics of the contents of conversations.

I explained that in my judgment defense counsel would not -- indeed, if the contents were gone into and opened up, could not -- agree to that[1] but wished him well in his effort.

Mr. Silbert's then stated positions were that: he would go into the contents of the conversations in only a general manner; he would vigorously protect our witness clients from cross-examination into the specific contents; we had no standing to suppress the contents or to otherwise affect Baldwin's testimony, the sole remedy available to witnesses being an appeal from contempt convictions arising after their refusal to answer his questions. He said that if we attempted court action to suppress contents we might thereby cause the revelations of contents to occur in those very proceedings. We understood this remark to be a threat and later sought protective orders to prevent this.

After lunch we returned to Mr. Silbert's office with Mr. Glanzer in order to obtain copies of our clients' Form 302 FBI statements and the transcripts of their Grand Jury testimony. Mr. Silbert had business elsewhere.

As we walked to that office Mr. Glanzer told us that they also had feared that information from their office had been provided outsiders but they had "gotten rid of" the person they

---

1. Mr. Glanzer was unsuccessful. Both prior to and during trial Mr. Liddy's counsel refused a waiver specifically claiming the right to detailed cross-examination.

thought responsible.

While we were seated with Mr. Glanzer in Mr. Silbert's office a secretary seeking Mr. Silbert said,

Mr. Dean wants Mr. Silbert on the phone.

Over the Christmas holidays a study of the D.N.C.'s clippings file was undertaken. This and an inquiry revealing a total l contrary evidence indicated that Mr. Silbert's blackmail motive had been woven from whole cloth. It became clear that by using bits and pieces of information acquired from the investigation and by delving into contents, he intended to present a non-political and fictitous motive for the crime. In this way, prosecutor Earl J. Silbert was to attempt to center the blame for Watergate on Mr. Hunt or Messrs. Hunt and Liddy, jointly. There was no basis for belief that the defendants would testify or otherwise contradict Mr. Silbert's "proof" of motive.[1] Thus he was to be free to present to the Court and the jury and through them to the public whatever motive he desired.

It then seemed certain that Mr. Silbert would prove the motive of the Cuban-Americans to be misguided anti-Castroism and the acquisition of money. To others, perhaps, he would attribute a misguided Republican loyalty. But to Mr. Hunt or to Messrs. Hunt and Liddy he would attribute an overriding and personal criminal as opposed to political motive-- and their motive was to be personal blackmail and big money.

Thus Mr. Silbert could argue to the jury and to the Court and through them, to the public, that the higher-ups were not only not parties to the criminal conspiracy-- they too were the victims of it. For Hunt, or Hunt and Liddy, Mr. Silbert would argue, had converted C.R.P.'s money and its legitimate political

1. Indeed, Messrs. Silbert and Glanzer had not advised us that Hur or anyone else was to plead guilty. I had inquired about this at ou December 22, 1972, meeting. But Mr. Glanzer did tell me that Mr. Hunt's attorney, William O. Bittman, was to go on a holiday skiing trip to Aspen, Colorado. It seemed to me that Mr. Bittman's pre-trial holiday indicated a guilty plea in the offing.

function to Hunt's personal use. He would argue that Hunt had deceived the Cuban-Americans-- men who trusted him-- and that he, or he and Liddy, had converted the moneys-- turned those massive amounts of cash legitimately provided by C.R.P. higher-ups-- to his or their own criminal [illegible] and by that fraudulent conversion Hunt or Hunt and Liddy had injured the C.R.P. and its officials at least as badly-- if not worse than-- they'd injured the Democrats.

None of this is hindsight. I advised each of my named clients of this prior to commencement of the trial.

They and I were then convinced that we were about to witness the use of the contents of the intercepted telephone conversations to bolster this thesis. And we were convinced that once the contents were introduced into evidence, the jury, the judge and through them the press and the public, might be so diverted to the contents of the conversations - personal conversations about the personal and political lives of members of the Democratic party - that they would accept Mr. Silbert's presentation of the false motive and would place ultimate responsibility for the Watergate conspiracy on Mr. Hunt or Messrs. Hunt and Liddy.[1]

---

1. There was another early and clear indication that the truth about Watergate could not come out at the trial. The indictment contained no counts charging the disclosure of contents. Baldwin had turned his logs over to Mr. McCord and on one occasion, to C.R.P. Thus the tracing of logs or other memoranda seemed all-important. (Had McCord been then offered use immunity - a logical offer to have been made if going after higher-ups - he would not have been able to disclose the ultimate destination of the logs and other memoranda but he would have been able to disclose the information regarding Magruder and others which eventually brought the facts to light.) It then seemed elemental that if the discloser refuses to testify then the prosecutors must of necessity go to the suspected disclosees. The prosecutor's argument that the logs and memoranda - now known as the Gemstone File - had been destroyed was thin and remains [illegible]. Firstly, the destruction had occurred only because [illegible] not been obtained and [illegible] had not been [illegible]. Secondly, even ifconceded [illegible] C.R.P. might have produced [illegible]. For example we now know that [illegible], Mr. [illegible]'s administrative assistant, had [illegible] April [illegible] [illegible] being [illegible] Select Committee on March [illegible] [illegible] the F.B.I. [illegible] [illegible] Porter absolutely. [illegible] [illegible] to [illegible].

And so on January 3, 1973, we filed our Motion to Suppress the Contents of Illegally Intercepted Wire or Communications and Evidence Derived Therefrom; to Quash Subpoenas; for a Protective Order and Further Relief.[1]

The first hearing on the motion was held on January 5, 1973. The following transpired:

> THE COURT: Let me ask you a question. How do you know the Government is going to introduce evidence regarding the alleged conversations?
>
> MR. MORGAN: The Government has told me. Hearing Transcript 4.

I sought:

> to demonstrate by some of Mr. Rothblatt's [civil case deposition] questions the fact that not only the United States knows of the conversations of my client and not only Mr. Baldwin and everybody he talked to, but I think the defense does too.[and, therefore, could cross-examine in detail]
> ....
> If I may go into the [sealed] depositions, Your Honor, I would like to do so now. Id. at 7.

Mr. Hunt's attorney, William O. Bittman, who soon thereafter was to plead his client guilty then successfully objected on the ground that:

> the sealed depositions ... may generate ... prejudicial publicity as to my client.... Id. at 8.

I pointed out that every count in the indictment could be proved without disclosure of contents, noted that no crime of disclosure had been charged and that had it been charged,

> you would have to bring in the witness, the person in that kind of case to whom it was disclosed. Id. at 15.

---

1. In addition to the suppression of contents we asked that certain named persons be subjected to an in camera under oath inquiry into whether they had

> in their possession or subject to their control logs, notes, transcriptions, tapes or other sound recordings or other memoranda of the contents and all copies thereof...and to further provide under oath the names of any and all persons who to their knowledge or information and belief at any time have had such...in their possession or subject to their control....

These then named persons comprise with but few exceptions a listing of those persons who are currently under investigation. These names were then available to Mr. Silbert who had at his disposal the F.B.I., the Grand Jury and the power of subpoena; we had the newspapers. The names were:

John Caulfield	Hon. Patrick L. Gray
Murray M. Chotiner, Esq.	Hon. Richard Kleindienst
Charles W. Colson, Esq.	Frederick La Rue

(footnote continued on following page)

Mr. Silbert argued that the proof of contents was "one of the methods" he intended to use to prove the interception, id. at 21, and that:

> the Government will introduce evidence not as to one single motive but evidence as to which, in our view, the jury, if it chooses to do so, may draw conclusions as to a variety of motives influencing the defendants in this case. Id. at 49.

and that:

> the public interest is paramount, the public interest far outweighs their privacy....Id. at 29-30.

Judge Sirica again noted that:

> there is great public interest in this case, not only throughout this country but maybe throughout the world, as a matter of common knowledge. Id. at 31.

and that he, the jury and the public wanted to know:

> Why did they go in there? What was the motive? What were they seeking? Why did they tap or allegedly tap those telephone conversations? What did they hear? Was it solely for political espionage, was it for other purposes? Id. at 30.
> ....
> This jury is going to arrive at the truth in this case, in my opinion. They can only get it by following the rules of evidence, protecting the rights of each defendant and the rights of the Government.
> ....
> The Democratic Party, according to the press and all -- and it is a matter of record -- has been put in the position or was put in the position of criticizing what's happened and rightly so, probably. I am not prejudging this case. Why not let the facts come out? Let's find out what happened in this situation. Let's find out what the motive was. Id. at 31.

Mr. Silbert also represented that he did not intend to go into:

> the specific details on our direct examination, of any matter that could be considered sensitive. Id. at 22.

and if:

> there is any attempt to go into details of the conversations other than for legitimate cross-

---

(continuation of footnote [illegible] previous page)

John W. Dean, III, Esq. — Clark MacGregor, Esq.
[illegible] — Jeb [illegible]
[illegible] — Glenn [illegible]
John N. Mitchell, Esq. — Hugh W. Sloan, Jr., Esq.
[illegible] — Maurice H. [illegible]
Herbert L. Porter — William E. Timmons, Esq.

strenuously objecting to any line of cross-examination that goes beyond a legitimate scope. [emphasis added] Id. at 24.

and that:

> all the witnesses...whose conversations were overheard, they will be identifiable; so that should the defense choose to do so, they may subpoena them in behalf of their defense at trial to challenge the accuracy of the statement. No question as to that. Id. at 38.

Thereafter there was the following response:

> Mr. Morgan:
>
> The defendant is not charged with disclosure himself. I suppose if he were charged, you would have to prove to whom he disclosed it. Id. at 41.

and representation:

> The prosecution has asked me if I have any information about anybody higher up anyplace who committed any offense or got the information or anything. Well, I have told them that I will talk to them about that if my clients give me release and I have such information.
> And I now do have some information I think they could use as far as the use count is concerned, to show use. I intend to talk to them about that right after we talk here. But that would go --

Then the following transpired:

> THE COURT: Let me understand what your statement means. Repeat that again.
>
> MR. MORGAN: I said that I was asked by the prosecution, because, you see -- let me put that in context so you understand completely what I am saying.
> Mr. Alch [defendant McCord's lawyer in his argument] raised a hypothetical question that there might be a hypothetical motive of blackmail shown. Your Honor went into the question of motives for the wiretap. It is not hypothetical; that is what the [illegible] to show use [illegible] blackmail, not motive.
>
> THE COURT: You say to [illegible] the Government expects to show blackmail?
>
> MR. MORGAN: Yes.
>
> THE COURT: That is the first time I heard that.
>
> MR. MORGAN: Well, I [illegible] the public [illegible]

THE COURT: You have made a statement --

MR. MORGAN, Yes, I am coming to that.

THE COURT: Something about higher-ups. I am interested in that. Who are the higher-ups? Do you know any [illegible] involved in [illegible] case? I would [illegible] let you go before the grand jury today.

MR. MORGAN: I will give you the statement that I have been advised by my clients that a man named Harry [illegible] spoke on this telephone, that Harry Fleming was a Republican official in the Republican Party, in [illegible] Committee to Re-Elect the President, and that he had been advised by other members Republicans that this individual was sitting after these wiretaps.

Now that would [illegible] political [illegible] rather than [illegible]

THE COURT: [illegible] things that [illegible] to subpoena you, let you go before the jury, let your client [illegible] is still together, [illegible] grand jury and I am sure the jury is interested in finding out whether there are any higher-ups, so-called higher-ups involved in this case.

I think you, as a citizen, as a lawyer, if you know of any, it is your duty to disclose them.

MR. MORGAN: Exactly what I just did, sir.

THE COURT: We are all interested in that. All right.

MR. MORGAN: Yes, Sir. When Your Honor went into the question of [illegible] talking [illegible] ing you is that in what I think they are trying to prove and [illegible]

I know in intelligence, in law, in politics, there are, I suppose [illegible]

That might say to some folks that [illegible] fine [illegible]

That is not my concern, the politics of this case. My concern in this case is to protect the First and Fourth Amendment rights of my clients, every one of them. Not just the [illegible] to protect [illegible] the defendants, but [illegible] and again every man in this country [illegible] of his position and whereabouts [illegible]

We submit that we should have that protective order, not as a matter of discretion but as a matter of right. [illegible]

---

1 (Continued on the following page.)

(Footnote from preceding page)

See at the deposition of R. Spencer Oliver where under questioning by Henry Rothblatt the following transpired:

> Have you or any of your associates -- I am speaking of the functionaries of the Democratic National Committee -- had any contact, either personally or in writing or by telephone, from any persons at the Republican National Committee or the Committee for the Re-Election of the President during 1972?
>
> A. I can't speak for anybody else at the Democratic National Committee, but I had conversations with Harry Flemming. Any others, I don't recall.
>
> Q. Had Harry Flemming ever given you any confidential information from the files or records of the Committee for the Re-Election of the President or the Republican National Committee?
>
> A. Absolutely not. Absolutely not. Id. at 151.

Flemming had preceded then Attorney-General John N. Mitchell to the CRP as Mitchell's on-the-scene representative. Jeb Stuart Magruder was Haldeman's man at the CRP. In this manner the Mitchell and Haldeman factions each maintained leadership representation in the campaign committee.

....

MR. BITTMAN:

....

I am sure Your Honor did it inadvertently, but Your Honor asked a specific question of Mr. Morgan which in my opinion is going to precipitate additional prejudicial publicity, higher-ups. Now he has named an individual by the name of Harry Fleming.

THE COURT: Don't you think it might help your client?

MR. BITTMAN: No, Your Honor, prejudicial publicity in my opinion will not help my client.

There are a few cases, or maybe this has been the only case where there has been so much massive prejudicial publicity during a six-month period. Id. at 46.

....

I do believe that if Mr. Morgan has any information or his client, Mr. Oliver, has any information, the grand jury is the appropriate forum because it can be testified to in secrecy. Id. at 47.

....

MR. MAROULIS: Your Honor, I am Peter Maroulis on behalf of the defendant Liddy.

I would like to join in the objection that was just stated by Mr. Bittman.

....

Additionally, lest my silence be misconstrued, Mr. Morgan has pointed out the First and Fourth Amendment problems that his clients face. I wish to state to the Court that I fully and vigorously intend to protect the Fifth and Sixth Amendment rights of my client and where cross-examination is required, I intend to pursue whatever remedies those Amendments give my client.

THE COURT: Mr. Silbert, do you want to answer?

MR. SILBERT: I do.

May it please the Court, first of all, as to the motives. Your Honor, I have stated before you on a previous occasion, and I will reiterate, that the Government will introduce evidence not as to one single motive but evidence as to which, in our view, the jury, if it chooses to do so, may draw conclusions as to a variety of motives influencing the defendants in this case.

Second, with respect to the comment, Mr. Morgan said that I asked him as to whether or not there are any higher-ups. There hasn't been a witness that has come before either the grand jury or been interviewed by myself, by Mr. [illegible] or Mr. Campbell, [illegible] witnesses who have a [illegible] information, [illegible] if they have any [illegible] relevant to the involvement of any other person, not a higher-up or a low [illegible], but anybody, involved [illegible], directly or indirectly, [illegible] asked them to provide [illegible].

> I made that request[1] of Mr. Morgan, and Mr. Glanzer and Mr. Campbell and myself have made it to every single witness with whom we have come in contact. We think that is no less than performing our own public duty and responsibility.
>
> I might say at this time -- of course, your Honor, I needn't say it to you, but I will say it -- that if there were evidence of the involvement that would substantiate a charge against anybody else in connection with this charge at this time, they would be indicted now, together with the rest of the defendants. Id. at 49-50.

Judge Sirica ruled that the contents were admissible and we appealed and sought extra-ordinary relief.

On Wednesday, January 10, 1973, Mr. Silbert made his opening statement to the jury. He did not therein employ the word "blackmail." At the January 5, 1973 hearing, he had avoided acknowledging his December 22,1972 statement. In the next few days he would misrepresent and then finally admit his intention but he now proceeded more subtly and by indirection. But even if by indirection it was apparent that he was building his proof of motive around R. Spencer Oliver and E. Howard Hunt--a man to whom Mr. Oliver merely had been introduced more than two years prior to the Watergate affair.

He told the jury:

> Now we are not going into the details of those conversations out of respect for those people's conversations who were overheard. Basically, some of those conversations dealt with the personal lives of those persons, social lives, domestic lives, some of those conversations dealt with the political matters as one would expect because Mr. Oliver was liason for the Association of State Democratic Chairmen. He was also a high official in the organization, American Council of Young Political Leaders. Some of those conversations one might expect also to be of a sensitive nature. Mr. McCord made it perfectly clear he was interested in conversations that were personal, of a sensitive nature. It might also say the evidence will show the defendant Hunt knew Spencer Oliver. Dr. Oliver had consulted before

1. The request was [illegible], as stated. I then felt that it was a request made to [illegible] the record. It was for information about "higher-ups" not "higher-ups" or a matter-of-the-road, but the concern shown by Mr. Silbert at counsel table when I used the words "higher-up" can be attested to by Mr. Eastman who at that moment was standing [illegible]. I was attempting Mr. Glanzer's statement to [illegible] then undisclosed [illegible] by out-of-court [illegible]

come to the offices of Robert R. Mullen Company for the possibility of getting a job there, that he had been introduced to Mr. Hunt, that after he left Mr. Hunt had voiced his opposition to Mr. Oliver coming to work there because Mr. Oliver was a liberal Democrat and he did not think he would fit well into that company. Tr. 53-54.

He laid the foundation for proof of a non-political motive saying:

> What were the motives behind this conduct? What are the reasons for their activities? What was their motivation? I am not telling you anything secret, obviously, Mr. Glanzer, Mr. Campbell or myself. We can only look at the facts and you draw the inferences you choose to draw as you are the factfinders as Judge Sirica told you yesterday.
>
> Obviously it was a political motive, political campaign. The operation was directed against Senator George McGovern, because of his alleged left-wing views. You heard me tell you what defendant McCord was primarily interested in on those monitored conversations Mr. Baldwin was hearing whether of a sensitive or personal nature.
>
> The interests of the persons, the defendants in this case may vary, that is, the motivation of the defendant Hunt and the defendant Liddy may have been different from the motivations of the four defendants from Miami, and they in turn may have had a different motivation than defendant McCord. Certainly the facts will suggest to you a financial motive here, a financial motive ....Tr. 62-63.

He spoke of the financial plight of the Cuban-Americans. "Financial motive was obvious" he said "because [of] the money recovered from the defendants when arrested and searched in the hotel room ...." Tr. 63.

"Now defendant McCord also had financial problems", he said, "very serious." Tr. 66.

As he concluded, he said:

> Ladies and gentlemen of the jury, this is the evidence. This is a summary of the evidence that the United States will produce before you in support of its charges in this case.

Nineteen days later, Gilbert was to make his closing argument to the jury, closing argument on behalf of the United States of America.

During these 19 days the victims of the Watergate crime

were to fight not only for their own personal and political lives but also for the rights of those who had participated in or been mentioned in their wiretapped conversations.

They not only had been the victims of the crime, they were now to become the far more injured victims of the trial. They faced being whipsawed between the prosecution and the defense in an American courtroom -- in a trial which was not a trial.

The American system of justice had been designed by history for the adjudication of adversary disputes. The separation of powers had been designed to prevent the usurpation of power by any one man or group of men.

We knew precisely what was happening to us and through us to the nation. For wrapped into this struggle to protect privacy, indeed, to suppress evidence, there lay the essential truth about Watergate. Without evidence of the contents of the conversations Mr. Silbert would be unable to convince anyone that the motive for the crime was blackmail. And without a believable non-political motive, a motive acceptable to and believed by Judge Sirica and the public, the search for truth in the Watergate case would continue.

As E. Howard Hunt sought to enter his negotiated plea of guilt to the charges against him, the case moved to another level of the independent judiciary.

On January 12, 1973, an emergency panel of the Court of Appeals heard oral argument. Here Mr. Silbert denied that he had made his original statement regarding blackmail.

The Washington Star-News 1, cols. 3-8, Jan. 12, 1973, reported the appellate argument as follows:[1]

---

1. A tr[illegible] appellate argument is unavailable.

Hunt Blackmail Issue Raised, Denied in Court

An attorney said in court today he was told by Asst. U.S. Atty. Earl J. Silbert, the prosecutor in the Watergate trial, that E. Howard Hunt, Jr., who pleaded guilty in the case yesterday, was attempting to blackmail a national Democratic official.

Charles Morgan, Jr., an American Civil Liberties Union attorney who has filed a motion relating to the Watergate case, told the U.S. Court of Appeals today that on Dec. 22 a prosecutor told him, "Hunt was trying to blackmail Spencer, and I'm going to prove it."

Asked by an appellate judge which prosecutor this was, Morgan replied, "It was Mr. Silbert."

Silbert, arguing after Morgan had finished, said that he "must disagree with Mr. Morgan as to the conclusion he draws about the two meetings" and the conversation that Friday before Christmas.

As on Friday, Morgan said today that he did not believe that blackmail was a motive behind the bugging plot for which seven men were finally charged.

"I find no attempt at blackmail," Morgan told the judges. "The only purpose I can find for it [attempting to show blackmail was a motive] was it looks nice on good, Mr. Hunt went out on his own adventure, and nobody else knew anything about it."[1]

Morgan was implying that Silbert might be taking this tack at trial in order to counter suspicions that Hunt and the six men indicted with him were in fact working for high-ranking Nixon administration or Nixon campaign officials.

Silbert said he told Morgan only that defendant McCord had expressed an interest in sensitive conversations of both a personal and political nature, and that Hunt had known one of the people whose conversations had been overheard.

Silbert appeared to be saying that Morgan had confused these statements and thought Silbert had said Hunt was after blackmail. Silbert later refused to elaborate on his statement in court.

However, in his rebuttal argument Morgan said he had checked his recollection with his associate, Hope Eastman, who was also present during the conversation with Silbert, and they both agreed that Morgan's version of Silbert's statement was correct.

Outside the courtroom, Morgan said he, Mrs. Eastman, Silbert and Assist. U.S. Atty. Seymour Glanzer, a member of the prosecution team, had had the conversation during lunch in a Pennsylvania Avenue restaurant.

There have been allegations that the Watergate incident was part of a larger espionage-sabotage campaign conducted with knowledge and funds from some Nixon campaign and White House officials. The administration has flatly denied these reports. [emphasis added]

---

1. In his actual argument 17 days later Mr. Silbert was to explain that McCord and Liddy "went off on an enterprise of their own. They, and regarding CRP money, Hunt and Liddy had to tell it. He had to turn it." Tr. 2[illegible].

Later that afternoon the Court of Appeals entered its order:

> that no evidence of the contents of any of the allegedly illegally intercepted communications shall be admitted except under the following conditions:
>
> (1) The trial judge shall hold an in camera hearing, with counsel for the prosecution, for the defense, and for movants present, on the proffer of evidence of such contents.
>
> (2) If there is objection to the admission of the evidence and if the objection is overruled, then opportunity will be provided to the parties and to the movants to appeal to this court before the proffered evidence is admitted.
>
> It is FURTHER ORDERED by the court that, in the event of an appeal to this court, the transcript of the in camera hearing, plus any evidence submitted in connection therewith, shall be sealed and delivered to the clerk of this court.[1]

---

1. United States of America v. George Gordon Liddy, et al., Robert E. B. Allen et al. [illegible] Jan. 12, 1973.

On January [illegible] 1973, Mr. Glanzer was [illegible]ining Alfred C. Baldwin, III. He had agreed that prior to inquiry into contents he would approach the bench and request an in camera, out-of-jury presence hearing. Instead, the following occurred:

> Q. [BY MR. GLANZER] From your monitoring of the telephone were you able to identify some of the individuals who used the phone besides Mr. Oliver?
>
> A. [BY MR. BALDWIN] That is correct.
>
> Q. Can you tell us who those individuals were?
>
> (MR. MORGAN) (Mr. Charles Morgan, Jr., Esq. representing the ACLU) [who had been seated with the spectators in the rear of the courtroom] Your Honor, at this point I would like to interpose an objection. That is contents under the statute --
>
> THE COURT: -- You mean disclosing the individuals is disclosing the content of the conversation?
>
> MR. SILBERT: Your Honor, I was going to approach the bench after he identified who it was he overheard.
>
> MR. MORGAN: The 'identity' is specifically covered....Tr. 952.
>
> (AT THE BENCH) MR. GLANZER: Your Honor, I want to apologize, I thought I could go into the identity and was going to stop as I told Your Honor. Tr. 954.

After the in camera hearing the trial Court ruled contents ac[illegible]sible, and the transcript was prepared, sealed and transmitted to the Court of Appeals. We there filed a Post-Hearing Memorandum under seal.

On that afternoon - January 18, 1973 - oral argument was heard and Mr. Silbert returned to the truth regarding his intended presentation of the blackmail motive.

The New York Times [illegible] cols. 1-4, Jan. 19, 1973, reported that argument as follows:[1]

---

1. See also "Tapped Conversation Vital For Motive, Prosecutor Says", Washington Star-News [illegible] cols. 1-3, Jan. 13, 1973:
> At the Appeals Court, Silbert publicly suggested that blackmail was a motive behind the bugging.

and the St. Louis Post Dispatch [illegible] col. 1, Jan. 19, 1973:
> At the appellate court hearing, the prosecution made a strong suggestion that blackmail might have figured in the [illegible]-bugging. [illegible] Earl J. Silbert virtually confirmed that this would be part of the government's case.
> At one point [illegible] Levin [illegible] Colon, chief judge of the U.S. Court of [illegible], bluntly asked Silbert if he was trying to [illegible].

(footnote continued on following page)

The Government publicly suggested for the first time today that blackmail was a motive behind the alleged bugging of Democratic national headquarters last summer by Republican-financed agents.

The chief prosecutor, Earl J. Silbert, made the suggestion at a Federal appeals court hearing on whether conversations secretly monitored from the wiretapped telephones of high Democratic officials could be admitted as evidence in the Watergate trial.

Mr. Silbert argued that the jury could tell by the type of phone conversations monitored that the eavesdroppers were interested in "political intelligence."

Judge David L. Bazelon, chief judge of the United States Court of Appeals for the District of Columbia, asked: "Is the Government interested in whether this information would be used to compromise these people? That is a euphemism for blackmail."

"We think it is highly relevant to lay a factual foundation so that we can suggest that is what they were interested in -- when they were doing some political wiretapping -- be interested in information that was personal and of a confidential and private nature?"

"Why don't you indict them for it?" Judge Bazelon asked.

"We believe this information goes to the motive and intent. It is relative to the motive and intent of the parties involved," Mr. Silbert said.

....

Mr. Silbert argued before the three-judge appeals court panel that Mr. Baldwin's testimony was vital to the Government's case and that the jury would make a "moral judgment" about why the wiretaps had been installed.

"Do you want to show how dirty this thing was?" Judge Bazelon asked. "You're talking about morality."

"We feel we shouldn't be limited to a bare-bones case. This is necessary to escape acquittal," Mr. Silbert replied.

"You're saying that the jury won't think it's a crime just to intercept a message?" Judge Bazelon asked, "that there has to be something deeper than that -- that there has to be something dirtier than that? I don't know. Maybe you're right."

"We think that," Mr. Silbert said. "If there is technical wiretapping, you're right. The jury does that to make a moral judgment."

Mr. Silbert said the prosecution did not intend to bring out "specific details of an conversations," but did intend to ask Mr. Baldwin the "general nature of what he overheard."

(continuation of footnote from previous page)

"Why else," Silbert replied, "would a wiretapper be interested, when doing political wiretapping, in information that is personal and of a confidential and private nature?" [emphasis added].

On the morning of January 19, 1973, the Court of Appeals issued its order which said:

> This case came on for consideration of appellants' *in camera* post-hearing memorandum and of appellee's motion for summary affirmance, and the court heard argument of counsel.
>
> Proof of the contents of intercepted telephone conversations is not required to prove the charges for which the defendants are on trial. Disclosure of such contents would frustrate the purpose of Congress in making wiretapping a crime. See particularly 18 U.S.C. § 2515 (1970).
>
> It is therefore ORDERED by the court that the contents of wiretapped conversations shall not be offered or received in evidence, nor shall any reference be made by the witnesses, the parties, or their counsel which would indicate the contents of such conversations, except *in camera*. This paragraph and the preceding paragraph of this order shall be read to the jury when the trial reconvenes.
>
> Nothing in this order will preclude the admission of evidence as to the telephones in the Democratic Headquarters which may have been tapped, or evidence as to the persons in Democratic Headquarters using such telephones during intercepted conversations [as we had represented was unobjectionable].
>
> This order supersedes our interim order of January 12, 1973, which is hereby vacated.[1]

Had we not known of the importance to the prosecution of the blackmail motive we now would have been forced to learn of it. For, the prosecutors had been putting more effort into the contents side-issue than they had into their case-in-chief.[2] It then seemed to us that no experienced trial lawyer would continue a side-struggle with the victims of the crime, a struggle to obtain evidence which the Court of Appeals had ruled was

> not required to prove the charges for which the defendants are on trial.

and which related to but one of what he had termed "several motives."

But Mr. Silbert continued the side-struggle. He first

---

1. United States of America v George Gordon Liddy, et al., et L. B. Allen et al., *supra*.
2. In addition to the two hearings in the trial court, the two hearings in the appellate court and the preparation of [illegible] and arguments on motion [illegible], Mr. Silbert had filed three motions for en banc or reargument consideration.

resisted the reading of the order to the trial jury saying:

> I know the order says that this paragraph and the preceding paragraph are to be read to the jury when the trial reconvenes.
> ....
> There are a lot of different factors that come into play with respect to it. For that reason, we would like an opportunity to study the matter over the weekend, consult with the Department of Justice to determine whether or not we wish to seek further relief. Tr. 1066.

After a protracted discussion, Tr. 1066 - 74, the order was stayed. On the following Monday the decision to not appeal having been made, Judge Sirica read its required portion to the jury. Tr. 1090-91.

It now fell to him to enforce the order. This was to prove difficult for Mr. Silbert was to continue his quest for the fruit denied him by the Court of Appeals.

Mr. Silbert had not yet presented the jury the testimony of Mr. Oliver and Miss Wells. Mr. Baldwin's testimony had been completed and Mr. Silbert's case was nearing conclusion. So, without notification to their counsel he telephoned the victims of the crime and told them to come to the trial.

Thereafter, Mrs. Eastman telephoned Mr. Silbert to arrange a time for him to interview our clients. But, Mr. Silbert stated to her that although he desired to interview his witnesses, he would not do so with their counsel present.

Mrs. Eastman suggested that only she be present. Mr. Silbert rejected this offer.

So Mr. Oliver and Miss Wells went to the witness room without knowledge of the questions which Mr. Silbert intended to ask.

It seemed to us that Mr. Silbert's conditioning of his interviews on the absence of counsel was not merely improper, it was dangerous to our clients. Mr. Oliver and Miss Wells knew that Mr. Silbert's interests and intentions were, at best, hostile.

Neither they nor we could conceive of the nature or amount of pressure he might place upon them to waive their rights.

After all, he did have the right to publicly question them and we did not know if our continued "third-party trial participation would be allowed. Additionally, without counsel present we felt he might undertake to obtain acquiescence in a facially proper line of questioning which opened a forbidden testimonial area.

On the other hand, there was the possibility that Mr. Silbert might follow exactly that same questioning course and thereafter contend that he hadn't known these "proper" questions would elicit improper answers since he had been unable to interview his witnesses prior to their appearances.

At the Court House Mr. Glanzer suggested that since we trusted him he would undertake to be present at Mr. Silbert's interview. Mrs. Eastman and I could remain nearby. We, of course, advised against this but left the final decision to Miss Wells and Mr. Oliver. They rejected his offer and the charade continued. Mr. Glanzer professing not to understand why Mr. Silbert and I were unwilling to be "reasonable" carried to Mr. Silbert the names of three other lawyers to accompany our clients. Mr. Silbert rejected each of these separately made offers[1] and called Miss Wells to the stand. It soon became apparent that he still was heading down the road to contents and thereafter, blackmail.

First, he warned his uninterviewed witness not to go into contents "in any way" and then the following transpired:

> MR. SILBERT: ...can you tell the ladies and gentlemen of the jury and His Honor for what purpose[2] you did use the telephone in Mr. Oliver's office?
>
> MR. ALCH: [Attorney for Mr. McCord] Your Honor, we better approach the bench.

---

1. We suggested to him Lois J. Schiffer of the District of Columbia Bar. Rejected. We thereafter offered him [illegible]. Rejected. We then suggested we'd attempt to obtain the services of David Isbell of Covington and Burling. Rejected.

2. 18 U.S.C. § 2510 (c) defines contents as "any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication [emphasis added]

THE COURT: We are not going into the contents?

MR. SILBERT: That is right. Tr. 1880

....

MR. SILBERT: The question was for what purpose, not the contents, Your Honor [emphasis added] Tr. 1881.

....

MR. SILBERT: I have no objection to you reading the order to them. I don't think just asking her why she on her own used the phone in that particular office, I am not asking what you said on the phone or what somebody said to her.

....

MR. MORGAN: What does he intend to bring out by that question? [emphasis added]

THE COURT: ...[O]bviously she couldn't be using the telephone as a private telephone for herself. [emphasis added]

MR. SILBERT: I am not so sure about that. As a matter of fact, I think that is why she did use it. [emphasis added]

THE COURT: Maybe she did, then you get into the contents, you see. Tr. 1882-83.

....

MR. SILBERT: Very well, Your Honor, in view of that, [an objection by Mr. Liddy's lawyer] if both parties feel that way, that is the party for the Movant and the Defendants, I will withdraw it. [emphasis added] Tr. 1883-84.

Judge Sirica then, without objection reread the Court of Appeals order to the jury, Tr. 1884, and the transcript discloses the following:

MR. SILBERT: Your Honor, I will withdraw my last question.

THE COURT: Let the reporter read the last question. (The reporter read the last question.)

THE COURT: All right. The jury will withdraw that question. Tr. 1885.

After he had placed Mr. Oliver on the stand he continued:

Q. During that period of time, May 25 to June 16 and 17, was there any time you were out of town.

THE WITNESS: Your Honor, I think he is going into contents. [emphasis added] Tr. 1916.

....

MR. MORGAN: ....In fact all of Mr. Silbert's information relating to Mr. Oliver's travel plans which is what I think he with this line of questioning he is getting to is derived from contents. Tr. 1916-17.

....

MR. SILBERT: Your Honor, if you recall both Mr. Baldwin and Maxie [Miss Wells] have testified about a tour that Mr. Baldwin received from Maxie during the period of June 12. The line of inquiry is only to show that Mr. Oliver was out of town at that time and I am just going to say were you out of town during what period of time, were you out and that is all.

MR. MORGAN: Where were you, Your Honor, is exactly relevant to the conversation and-- ... [emphasis added] Tr. 1917.
THE COURT: I understand. I think you can ask him if he was out of town.

MR. MORGAN: Where was he is a matter that comes from contents.

MR. SILBERT: I don't have to ask him that.

MR. MORGAN: There is no other matter that goes into contents?

MR. SILBERT: I resent that statement by Mr. Morgan. I know what I intended to go into, the contents, the witness' remarks was totally unnecessary and there is no basis for Mr. Morgan's statement. Tr. 1918.
....
BY MR. SILBERT:
Q. When did you leave, Mr. Oliver, and when did you return?

A. Well, I went out of town over the Memorial Day weekend with my family and I don't remember what the exact date of that was and I went to the Texas State Democratic Convention. I left a few days before and returned the day after, I believe.

Q. Was the Texas State Convention held on June 12, a Monday.

A. No. Tr. 1920

He asked Oliver if he knew "a person by the name of Howard Hunt?":

A. I believe I had met Mr. Hunt.
....
...I believe I was introduced to him some two and a half to three years ago and I wouldn't recognize him from that meeting. I would recognize the photograph [proffered by Mr. Silbert] as one I had seen in the newspaper. Tr. 1921.
....
THE COURT: I don't know what the purpose of this is, frankly.
....
(At the bench)
THE COURT: Suppose you make a proffer of proof, Mr. Silbert.

MR. SILBERT: Yes. He will simply say he met Mr. Hunt when he was brought over to the Robert R. Mullen Company and given a tour with the idea that he might be employed at that particular business and during the course of the tour he met Mr. Hunt and that is basically all it is.
Now the reason for bringing that in, of course it is his phone that is being tapped. Mr. Hunt is one of the chief wrench-pins of the conspiracy and as Mr. Baldwin has testified what Mr. McCord told him he was interested in all conversations of a personal nature, whether political or otherwise, and that is right in the transcript and if

the Court please, highly relevant, ev[illegible] ping the telephone of somebody you kno[illegible] opposed to somebody who may be a poli[illegible] figure and we think where Hunt was one of the ringleaders.

THE COURT: Any objection to that?

MR. MORGAN: Yes, sir. I want to sp[illegible] to that, Your Honor, if I may.

The matter we originally raised [illegible] Honor's Court several weeks ago was [illegible] prosecutor told me, I quote: "Hunt [illegible] in[illegible] to blackmail Spencer and I am go[illegible] prove it."

THE COURT: Wait a minute. What?

MR. MORGAN: "Hunt was trying to bl[illegible] Spencer, and I will prove it." This [illegible] case with respect to contents and th[illegible] ter in contents which I believe Mr. S[illegible] is going into by indirection is a [illegible] at issue and covered by the Court of Appeals order and what Mr. Silbert I think [illegible] to do is exactly what he has done, h[illegible] brought out the Texas convention, he[illegible] moves forward by indirect question [illegible] he moves to Mr. Hunt and very shortly [illegible] will move to other contents or somet[illegible] will and once it is opened up these d[illegible] dants go into it.

THE COURT: Have you finished? I'll hear you.

MR. ALCH: Your Honor, I object on the grounds it is immaterial. Here is a conversation happened over two years ago. How can [illegible] any way this impute the intent on the part of these people to listen to personal phone calls and certainly doesn't pertain to McCord, he is not anywhere near the picture two and a half years ago.

THE COURT: I have kept out some evidence going back a few months prior to the alleged conspiracy, now we are going back two years. What difference does it make? He said he saw Mr. Hunt's picture in the paper and that establishes he knows who he is. I think we are getting into something that is not only remote but insignificant. I mean there is so much in here to show the telephones were tapped or what they were doing in there. All right. I will sustain the objection.

MR. GLANZER: Your Honor, before we leave I don't think Mr. Silbert needs any defense, but I think the remarks made by Mr. Morgan were inappropriate. Mr. Silbert did not seek to go into contents of the conversation indirectly or directly and to impute to these actions strikes me as unseemly. The fact that the man went to the Texas convention could be obtained without ever discussing the contents. As a matter of fact, if we would, or have to ask Mr. Spencer [illegible] he will tell you.

THE COURT: I can't [illegible] I agree with Mr. Morgan's remarks. I didn't see any evidence [illegible] was trying to [illegible] indirectly [illegible]

directly. It didn't appear that way to me.

MR. GLANZER: He was not going into anything about blackmail or anything else. I think it is an unusual fact that the person whose phone is tapped is known by the principal conspirator and puts different light on things and that is what Mr. Silbert was trying to do and Your Honor was proper in deciding your discretion and has nothing to do with circumventing an order or bad faith, or contents.

THE COURT: I already ruled. Let's proceed. Tr. 1922-25

On cross-examination the following transpired:

Q. [BY MR. MAROULIS, MR. LIDDY'S ATTORNEY] Mr. Oliver, have you ever been the object of blackmail?

A. No, sir. Tr. 1929.

The Government of the United States then rested. Tr. 1933.

The people's lawyer - Principal Assistant United States Attorney, Earl J. Silbert, now was to be put to a closing argument without evidence of the contents of the conversations and, consequently, without a believable non-political motive.

He did the best he could.

He argued:

> He [McCord] and Liddy were off on an enterprise of their own. Diverting that money for their own uses. Tr. 2066.

Mr. Silbert's closing argument -- fiction unworthy of an E. Howard Hunt novel -- seemed somehow appropriate for the case. He bore down on a money motive but the questions raised by the trial had opened rather than closed the books. Mr. Silbert pictured Mr. Liddy as the top man, the "boss" and money as the motive. He told the jury and by then a still listening but unbelieving world:

> He [Mr. Liddy] had been authorized to engage in certain intelligence gathering activities, and you heard from Mr. Magruder and Mr. Porter what the purpose was.
>
> But he wasn't content to follow out what he was supposed to do. He had to divert it. He had to turn it. And he and Mr. Hunt while they had that two hundred and thirty thousand.

that was a lot of money, they lived high, wide and handsome, didn't they. Tr. 2062-63.

The following sequenced extracts from Mr. Silbert's closing argument are necessary to fully understand its monstrous wrong:

> The leader of the conspirators, as I will discuss with you later on, finding out the information from the person for whose work he is paying, the money man, the boss. Tr. 2036.
>
> ....
>
> And who was the boss? Who was the boss that night? Tr. 2038.
>
> ....
>
> The boss, the defendant Liddy, the man in charge, the money man, the supervisor, the organizer, the administrator.
>
> That was Mr. Liddy, organizing and directing this enterprise right from the start....Tr. 2039.
>
> ....
>
> So that we know, don't we, ladies and gentlemen of the jury, that George Leonard is the defendant Liddy. Again, since when does a lawyer, general counsel for a major campaign committee, political committee, have to run around the country, California, Miami, in his own city of Washington using an alias, if he is engaged in legitimate, honest valid activity? Tr. 2041.
>
> ....
>
> Money talks and the defendant Liddy had lots of money to make that money talk didn't he? And Mr. McCord was handing it out. Hundred dollar bills. One after the other. Tr. 2042.
>
> ....
>
> The only kind of payment. Fresh new hundred dollar bills from the money man, Mr. Liddy, the boss, the supervisor. Tr. 2043.
>
> ....
>
> That is pretty good eating isn't it. Eight persons for $2[illegible].00. That is pretty good eating isn't it? All on the money the cash money that was flowing into Mr. Liddy's hands and just floating out.[1] Tr. 2045.
>
> ....
>
> When Baldwin got his money from McCord he had to account for it, didn't he? He gave a receipt every time but when McCord got his money from Liddy, the Boss knows what was paid, doesn't he. You don't have to explain things to the boss because the boss is right there. When the boss isn't there, then you got to account for it, and that boss is Liddy. Tr. 2049.
>
> ....
>
> And what does Mr. Sloan say Mr. Liddy says to him? Mr. Sloan was going in. Liddy [illegible] in his hair. .... He said to the best of my recollection, 'My boys got caught last night. I made a mistake. I used somebody from here which I said I would never do. I am afraid I

---

1. (Footnote [illegible] following page)

am going to lose my job."" Tr. 2058.

....

[T]he logs had been given to the boss of the operation, Mr. Liddy....Tr. 2059.

....

And whose money was it, and who ordered the payment? The defendant Liddy, the money man, the boss. Tr. 2060.

....

And, as Mr. Bennett told you, well, you got a new boss. He said to Mr. Liddy. Remember? Because John Mitchell had resigned. And Clark Magregor had taken over as campaign director of the Republican Committee. He said "I don't have a new boss. There is a new boss there but it is not mine." And why not? Tr. 2062.

....

And, again, just to complete now. We heard, as you did, a number of people from the committee that Liddy did have a lot of money, a lot of money had been put into his hands. Where did it come from? He had been authorized to engage in certain intelligence gathering activities, and you heard from Mr. Magruder and Mr. Porter what the purpose was.

But he wasn't content to follow out what he was supposed to do. He had to divert it. He had to turn it. And he and Mr. Hunt while they had that two hundred and thirty thousand, that was a lot of money, they lived high, wide and handsome, didn't they? Id. 2062-63.

....

That is not bad pay is it? Id. 2065.

....

What about that money? All the money from the defendant Liddy? All of it given as Mr. Sloan indicated to you earlier, virtually all of it in one-hundred dollar bill packages of ten. A thousand dollars at a clip. And who does the evidence show had a lot of that money? The defendant McCord. Id. 2065-66.

He and Liddy were off on an enterprise of their own. Diverting that money for their own uses. Tr. 2066.

---

1. (footnote from preceding page)
Compare the testimony of prosecution witness Thomas Gregory. Tr. 262.

Q. [BY MR. SILBERT] And did you go somewhere else then?
A. Yes. [Accompanied by Messrs. Hunt and Liddy] I went to McDonald's Hamburger Shop.

Q. And what did you do at McDonald's Hamburger Stand?

A. We got some hamburgers and something to drink.

Conclusion

This report began with a brief look at Presidential efforts to limit the investigation. Thereafter set forth were some of the methods employed by the prosecution to shape the investigation and the trial. In drawing conclusions from the record, the following also must be considered.

The first and basic decision, indeed the most important political decision to be made after the Watergate break-in, was the selection of the person to be placed in actual, ground-level charge of the prosecution.

Even assuming that Mr. Nixon had no pre- and immediate post-crime knowledge of the Watergate break-in and related criminal activity, he had placed greatest faith not merely in the person who supervised the prosecution but, most importantly, the person to be actually in charge of the Grand Jury.

Of the Grand Jury, Chicago's veteran Chief Federal District Judge William Campbell has said:

> This great institution of the past has long ceased to be the guardian of the people for which purpose it was created at Runnymede. Today, it is but a convenient tool for the prosecutor -- too often used solely for publicity. Any experienced prosecutor will admit that he can indict anybody at any time for almost anything.[1]

Mr. Nixon, the lawyer, knew this. Mr. Nixon, the politician, knew this.

And he knew of the potential for danger represented by a bright, young, and ambitious prosecuting attorney.[2] Nowhere better might that ambitious young man make a name for himself and further a political or legal career than as the "gang-busting"

---

1. Quoted from United States v. Dionisio, 93 S.Ct. 764, 777 (1973) (Douglas J. dissenting).

2. From time-to-time the prosecutors' private and public explanations of their early "mistakes" rely upon their "naivete" or "tunnel-vision" or the widespread conspiracy and high-level perjury which was thrust upon them. These explanations do not involve considerations which one would ordinarily rely upon when deciding whom to employ as a personal attorney.